

AMENDED IN SENATE AUGUST 20, 2014  
AMENDED IN ASSEMBLY APRIL 24, 2014  
AMENDED IN ASSEMBLY MARCH 19, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2625**

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**Introduced by Assembly Member Achadjian**

February 21, 2014

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An act to amend Section 1370 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2625, as amended, Achadjian. Defendants: competence.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, *as directed by the State Department of State Hospitals*, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for voluntary and involuntary administration of antipsychotic medication. Existing law requires the medical director of the state hospital or other treatment facility to which the defendant is confined to make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of

mental competence, within 90 days of commitment. Existing law requires, that if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for conservatorship proceedings.

This bill would require, if the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court to order the defendant to be returned to the court no later than 10 days following receipt of the report, and would require the medical director of the state hospital or other treatment facility in which the defendant is confined to promptly notify the defense counsel and the district attorney and to notify the committing county's sheriff that transportation will be needed for the patient.

By imposing additional responsibilities on medical directors at local facilities, this bill would impose a state-mandated local program.

Existing law provides that at the end of 3 years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court.

This bill would require the defendant to be returned to the committing court no later than 90 days prior to the expiration of his or her term of commitment.

*This bill would incorporate additional changes to Section 1370 of the Penal Code, proposed by AB 2186 and SB 1412, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, and this bill is chaptered last.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1370 of the Penal Code is amended to*  
2     *read:*

3     1370. (a) (1) (A) If the defendant is found mentally  
4     competent, the criminal process shall resume, the trial on the  
5     offense charged shall proceed, and judgment may be pronounced.

6     (B) If the defendant is found mentally incompetent, the trial or  
7     judgment shall be suspended until the person becomes mentally  
8     competent.

9     (i) In the meantime, the court shall order that the mentally  
10    incompetent defendant be delivered by the sheriff to a state hospital  
11    for the care and treatment of the mentally disordered, as directed  
12    by the State Department of State Hospitals, or to any other available  
13    public or private treatment facility, including a local county jail  
14    treatment facility or the community-based residential treatment  
15    system established pursuant to Article 1 (commencing with Section  
16    5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and  
17    Institutions Code if the facility has a secured perimeter or a locked  
18    and controlled treatment facility, approved by the community  
19    program director that will promote the defendant's speedy  
20    restoration to mental competence, or placed on outpatient status  
21    as specified in Section 1600.

22    (ii) However, if the action against the defendant who has been  
23    found mentally incompetent is on a complaint charging a felony  
24    offense specified in Section 290, the prosecutor shall determine  
25    whether the defendant previously has been found mentally  
26    incompetent to stand trial pursuant to this chapter on a charge of  
27    a Section 290 offense, or whether the defendant is currently the  
28    subject of a pending Section 1368 proceeding arising out of a  
29    charge of a Section 290 offense. If either determination is made,  
30    the prosecutor shall so notify the court and defendant in writing.  
31    After this notification, and opportunity for hearing, the court shall  
32    order that the defendant be delivered by the sheriff to a state  
33    hospital, as directed by the State Department of State Hospitals,  
34    or other secure treatment facility for the care and treatment of the  
35    mentally disordered unless the court makes specific findings on  
36    the record that an alternative placement would provide more  
37    appropriate treatment for the defendant and would not pose a  
38    danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others. If the court places a defendant charged with a violent felony on outpatient status, as specified in Section 1600, the court ~~must~~ *shall* serve copies of the placement order on defense counsel, the sheriff in the county where the defendant will be ~~placed~~ *placed*, and the district attorney for the county in which the violent felony charges are pending against the defendant.

(2) Prior to making the order directing that the defendant be committed to the State Department of State Hospitals or other

1 treatment facility or placed on outpatient status, the court shall  
2 proceed as follows:

3 (A) The court shall order the community program director or a  
4 designee to evaluate the defendant and to submit to the court within  
5 15 judicial days of the order a written recommendation as to  
6 whether the defendant should be required to undergo outpatient  
7 treatment, or *be* committed to the State Department of State  
8 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*  
9 be admitted to a state hospital or other treatment facility or placed  
10 on outpatient status under this section without having been  
11 evaluated by the community program director or a designee. The  
12 community program director or designee shall evaluate the  
13 appropriate placement for the defendant between the State  
14 Department of State Hospitals, a local county jail treatment facility,  
15 or the community-based residential treatment system based upon  
16 guidelines provided by the State Department of State Hospitals.  
17 If a local county jail treatment facility is selected, the State  
18 Department of State Hospitals shall provide treatment at the county  
19 jail treatment facility and reimburse the county jail treatment  
20 facility for the reasonable costs of the bed during the treatment. If  
21 the community-based residential treatment system is selected, the  
22 State Department of State Hospitals shall provide reimbursement  
23 to the community-based residential treatment system for the cost  
24 of treatment as negotiated with the State Department of State  
25 Hospitals. The six-month limitation in Section 1369.1 shall not  
26 apply to individuals deemed incompetent to stand trial who are  
27 being treated to restore competency within a county jail treatment  
28 facility pursuant to this section.

29 (B) The court shall hear and determine whether the defendant  
30 lacks capacity to make decisions regarding the administration of  
31 antipsychotic medication, and shall proceed as follows:

32 (i) The court shall hear and determine whether any of the  
33 following is true:

34 (I) The defendant lacks capacity to make decisions regarding  
35 antipsychotic medication, the defendant's mental disorder requires  
36 medical treatment with antipsychotic medication, and, if the  
37 defendant's mental disorder is not treated with antipsychotic  
38 medication, it is probable that serious harm to the physical or  
39 mental health of the patient will result. Probability of serious harm  
40 to the physical or mental health of the defendant requires evidence

1 that the defendant is presently suffering adverse effects to his or  
2 her physical or mental health, or the defendant has previously  
3 suffered these effects as a result of a mental disorder and his or  
4 her condition is substantially deteriorating. The fact that a  
5 defendant has a diagnosis of a mental disorder does not alone  
6 establish probability of serious harm to the physical or mental  
7 health of the defendant.

8 (II) The defendant is a danger to others, in that the defendant  
9 has inflicted, attempted to inflict, or made a serious threat of  
10 inflicting substantial physical harm on another while in custody,  
11 or the defendant had inflicted, attempted to inflict, or made a  
12 serious threat of inflicting substantial physical harm on another  
13 that resulted in his or her being taken into custody, and the  
14 defendant presents, as a result of mental disorder or mental defect,  
15 a demonstrated danger of inflicting substantial physical harm on  
16 others. Demonstrated danger may be based on an assessment of  
17 the defendant's present mental condition, including a consideration  
18 of past behavior of the defendant within six years prior to the time  
19 the defendant last attempted to inflict, inflicted, or threatened to  
20 inflict substantial physical harm on another, and other relevant  
21 evidence.

22 (III) The people have charged the defendant with a serious crime  
23 against the person or property, involuntary administration of  
24 antipsychotic medication is substantially likely to render the  
25 defendant competent to stand trial, the medication is unlikely to  
26 have side effects that interfere with the defendant's ability to  
27 understand the nature of the criminal proceedings or to assist  
28 counsel in the conduct of a defense in a reasonable manner, less  
29 intrusive treatments are unlikely to have substantially the same  
30 results, and antipsychotic medication is in the patient's best medical  
31 interest in light of his or her medical condition.

32 (ii) If the court finds any of the conditions described in clause  
33 (i) to be true, the court shall issue an order authorizing the treatment  
34 facility to involuntarily administer antipsychotic medication to the  
35 defendant when and as prescribed by the defendant's treating  
36 psychiatrist. The court shall not order involuntary administration  
37 of psychotropic medication under subclause (III) of clause (i)  
38 unless the court has first found that the defendant does not meet  
39 the criteria for involuntary administration of psychotropic

1 medication under subclause (I) of clause (i) and does not meet the  
2 criteria under subclause (II) of clause (i).

3 (iii) In all cases, the treating hospital, facility, or program may  
4 administer medically appropriate antipsychotic medication  
5 prescribed by a psychiatrist in an emergency as described in  
6 subdivision (m) of Section 5008 of the Welfare and Institutions  
7 Code.

8 (iv) If the court has determined that the defendant has the  
9 capacity to make decisions regarding antipsychotic medication,  
10 and if the defendant, with advice of his or her counsel, consents,  
11 the court order of commitment shall include confirmation that  
12 antipsychotic medication may be given to the defendant as  
13 prescribed by a treating psychiatrist pursuant to the defendant's  
14 consent. The commitment order shall also indicate that, if the  
15 defendant withdraws consent for antipsychotic medication, after  
16 the treating psychiatrist complies with the provisions of  
17 subparagraph (C), the defendant shall be returned to court for a  
18 hearing in accordance with subparagraphs (C) and (D) regarding  
19 whether antipsychotic medication shall be administered  
20 involuntarily.

21 (v) If the court has determined that the defendant has the  
22 capacity to make decisions regarding antipsychotic medication  
23 and if the defendant, with advice from his or her counsel, does not  
24 consent, the court order for commitment shall indicate that, after  
25 the treating psychiatrist complies with the provisions of  
26 subparagraph (C), the defendant shall be returned to court for a  
27 hearing in accordance with subparagraphs (C) and (D) regarding  
28 whether antipsychotic medication shall be administered  
29 involuntarily.

30 (vi) Any report made pursuant to paragraph (1) of subdivision  
31 (b) shall include a description of any antipsychotic medication  
32 administered to the defendant and its effects and side effects,  
33 including effects on the defendant's appearance or behavior that  
34 would affect the defendant's ability to understand the nature of  
35 the criminal proceedings or to assist counsel in the conduct of a  
36 defense in a reasonable manner. During the time the defendant is  
37 confined in a state hospital or other treatment facility or placed on  
38 outpatient status, either the defendant or the people may request  
39 that the court review any order made pursuant to this subdivision.  
40 The defendant, to the same extent enjoyed by other patients in the

1 state hospital or other treatment facility, shall have the right to  
2 contact the patients' rights advocate regarding his or her rights  
3 under this section.

4 (C) If the defendant consented to antipsychotic medication as  
5 described in clause (iv) of subparagraph (B), but subsequently  
6 withdraws his or her consent, or, if involuntary antipsychotic  
7 medication was not ordered pursuant to clause (v) of subparagraph  
8 (B), and the treating psychiatrist determines that antipsychotic  
9 medication has become medically necessary and appropriate, the  
10 treating psychiatrist shall make efforts to obtain informed consent  
11 from the defendant for antipsychotic medication. If informed  
12 consent is not obtained from the defendant, and the treating  
13 psychiatrist is of the opinion that the defendant lacks capacity to  
14 make decisions regarding antipsychotic medication based on the  
15 conditions described in subclause (I) or (II) of clause (i) of  
16 subparagraph (B), the treating psychiatrist shall certify whether  
17 the lack of capacity and any applicable conditions described above  
18 exist. That certification shall contain an assessment of the current  
19 mental status of the defendant and the opinion of the treating  
20 psychiatrist that involuntary antipsychotic medication has become  
21 medically necessary and appropriate.

22 (D) (i) If the treating psychiatrist certifies that antipsychotic  
23 medication has become medically necessary and appropriate  
24 pursuant to subparagraph (C), antipsychotic medication may be  
25 administered to the defendant for not more than 21 days, provided,  
26 however, that, within 72 hours of the certification, the defendant  
27 is provided a medication review hearing before an administrative  
28 law judge to be conducted at the facility where the defendant is  
29 receiving treatment. The treating psychiatrist shall present the case  
30 for the certification for involuntary treatment and the defendant  
31 shall be represented by an attorney or a patients' rights advocate.  
32 The attorney or patients' rights advocate shall be appointed to meet  
33 with the defendant no later than one day prior to the medication  
34 review hearing to review the defendant's rights at the medication  
35 review hearing, discuss the process, answer questions or concerns  
36 regarding involuntary medication or the hearing, assist the  
37 defendant in preparing for the hearing and advocating for his or  
38 her interests at the hearing, review the panel's final determination  
39 following the hearing, advise the defendant of his or her right to  
40 judicial review of the panel's decision, and provide the defendant



1 with referral information for legal advice on the subject. The  
2 defendant shall also have the following rights with respect to the  
3 medication review hearing:

4 (I) To ~~being~~ *be* given timely access to the defendant's records.

5 (II) To be present at the hearing, unless the defendant waives  
6 that right.

7 (III) To present evidence at the hearing.

8 (IV) To question persons presenting evidence supporting  
9 involuntary medication.

10 (V) To make reasonable requests for attendance of witnesses  
11 on the defendant's behalf.

12 (VI) To a hearing conducted in an impartial and informal  
13 manner.

14 (ii) If the administrative law judge determines that the defendant  
15 either meets the criteria specified in subclause (I) of clause (i) of  
16 subparagraph (B), or meets the criteria specified in subclause (II)  
17 of clause (i) of subparagraph (B), then antipsychotic medication  
18 may continue to be administered to the defendant for the 21-day  
19 certification period. Concurrently with the treating psychiatrist's  
20 certification, the treating psychiatrist shall file a copy of the  
21 certification and a petition with the court for issuance of an order  
22 to administer antipsychotic medication beyond the 21-day  
23 certification period. For purposes of this subparagraph, the treating  
24 psychiatrist shall not be required to pay or deposit any fee for the  
25 filing of the petition or other document or paper related to the  
26 petition.

27 (iii) If the administrative law judge disagrees with the  
28 certification, medication may not be administered involuntarily  
29 until the court determines that antipsychotic medication should be  
30 administered pursuant to this section.

31 (iv) The court shall provide notice to the prosecuting attorney  
32 and to the attorney representing the defendant, and shall hold a  
33 hearing, no later than 18 days from the date of the certification, to  
34 determine whether antipsychotic medication should be ordered  
35 beyond the certification period.

36 (v) If, as a result of the hearing, the court determines that  
37 antipsychotic medication should be administered beyond the  
38 certification period, the court shall issue an order authorizing the  
39 administration of that medication.

(vi) The court shall render its decision on the petition and issue its order no later than three calendar days after the hearing and, in any event, no later than the expiration of the 21-day certification period.

(3) When the court orders that the defendant be committed to the State Department of State Hospitals or other public or private treatment facility, the court shall provide copies of the following documents prior to the admission of the defendant to the State Department of State Hospitals or other treatment facility where the defendant is to be committed:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(I) Any medical records.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

1 (5) When directing that the defendant be confined in a state  
2 hospital pursuant to this subdivision, the court shall commit the  
3 patient to the State Department of State Hospitals.

4 (6) (A) If the defendant is committed or transferred to the State  
5 Department of State Hospitals pursuant to this section, the court  
6 may, upon receiving the written recommendation of the medical  
7 director of the state hospital and the community program director  
8 that the defendant be transferred to a public or private treatment  
9 facility approved by the community program director, order the  
10 defendant transferred to that facility. If the defendant is committed  
11 or transferred to a public or private treatment facility approved by  
12 the community program director, the court may, upon receiving  
13 the written recommendation of the community program director,  
14 transfer the defendant to the State Department of State Hospitals  
15 or to another public or private treatment facility approved by the  
16 community program director. In the event of dismissal of the  
17 criminal charges before the defendant recovers competence, the  
18 person shall be subject to the applicable provisions of the  
19 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
20 5000) of Division 5 of the Welfare and Institutions Code). If either  
21 the defendant or the prosecutor chooses to contest either kind of  
22 order of transfer, a petition may be filed in the court for a hearing,  
23 which shall be held if the court determines that sufficient grounds  
24 exist. At the hearing, the prosecuting attorney or the defendant  
25 may present evidence bearing on the order of transfer. The court  
26 shall use the same standards as are used in conducting probation  
27 revocation hearings pursuant to Section 1203.2.

28 Prior to making an order for transfer under this section, the court  
29 shall notify the defendant, the attorney of record for the defendant,  
30 the prosecuting attorney, and the community program director or  
31 a designee.

32 (B) If the defendant is initially committed to the State  
33 Department of State Hospitals or secure treatment facility pursuant  
34 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is  
35 subsequently transferred to any other facility, copies of the  
36 documents specified in paragraph (3) shall be taken with the  
37 defendant to each subsequent facility to which the defendant is  
38 transferred. The transferring facility shall also notify the appropriate  
39 law enforcement agency or agencies having local jurisdiction at

1 the site of the new facility that the defendant is a person subject  
2 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

3 (7) An order by the court authorizing involuntary medication  
4 of the defendant shall be valid for no more than one year. The  
5 court shall review the order six months after the order was made  
6 to determine if the grounds for the authorization remain. In the  
7 review, the court shall consider the reports of the treating  
8 psychiatrist or psychiatrists and the defendant's patients' rights  
9 advocate or attorney. The court may require testimony from the  
10 treating psychiatrist or psychiatrists and the patients' rights  
11 advocate or attorney, if necessary. The court may continue the  
12 order authorizing involuntary medication for up to another six  
13 months, or vacate the order, or make any other appropriate order.

14 (b) (1) Within 90 days of a commitment made pursuant to  
15 subdivision (a), the medical director of the state hospital or other  
16 treatment facility to which the defendant is confined shall make a  
17 written report to the court and the community program director  
18 for the county or region of commitment, or a designee, concerning  
19 the defendant's progress toward recovery of mental competence.  
20 If the defendant is on outpatient status, the outpatient treatment  
21 staff shall make a written report to the community program director  
22 concerning the defendant's progress toward recovery of mental  
23 competence. Within 90 days of placement on outpatient status, the  
24 community program director shall report to the court on this matter.  
25 If the defendant has not recovered mental competence, but the  
26 report discloses a substantial likelihood that the defendant will  
27 regain mental competence in the foreseeable future, the defendant  
28 shall remain in the state hospital or other treatment facility or on  
29 outpatient status. Thereafter, at six-month intervals or until the  
30 defendant becomes mentally competent, if the defendant is  
31 confined in a treatment facility, the medical director of the hospital  
32 or person in charge of the facility shall report in writing to the  
33 court and the community program director or a designee regarding  
34 the defendant's progress toward recovery of mental competence.  
35 If the defendant is on outpatient status, after the initial 90-day  
36 report, the outpatient treatment staff shall report to the community  
37 program director on the defendant's progress toward recovery,  
38 and the community program director shall report to the court on  
39 this matter at six-month intervals. A copy of these reports shall be  
40 provided to the prosecutor and defense counsel by the court. ~~ff~~

1 (A) If the report indicates that there is no substantial likelihood  
2 that the defendant will regain mental competence in the foreseeable  
3 future, the committing court shall order the defendant to be returned  
4 to the court for proceedings pursuant to paragraph (2) of  
5 subdivision (e). (c) *no later than 10 days following receipt of the*  
6 *report.* The court shall transmit a copy of its order to the  
7 community program director or a designee.

8 (B) *If the report indicates that there is no substantial likelihood*  
9 *that the defendant will regain mental competence in the foreseeable*  
10 *future, the medical director of the state hospital or other treatment*  
11 *facility to which the defendant is confined shall do both of the*  
12 *following:*

13 (i) *Promptly notify and provide a copy of the report to the*  
14 *defense counsel and the district attorney.*

15 (ii) *Provide a separate notification, in compliance with*  
16 *applicable privacy laws, to the committing county's sheriff that*  
17 *transportation will be needed for the patient.*

18 (2) If the court has issued an order authorizing the treating  
19 facility to involuntarily administer antipsychotic medication to the  
20 defendant, the reports made at six-month intervals concerning the  
21 defendant's progress toward regaining competency shall also  
22 consider the issue of involuntary medication. Each report shall  
23 include, but is not limited to, all the following:

24 (A) Whether or not the defendant has the capacity to make  
25 decisions concerning antipsychotic medication.

26 (B) If the defendant lacks capacity to make decisions concerning  
27 antipsychotic medication, whether the defendant risks serious harm  
28 to his or her physical or mental health if not treated with  
29 antipsychotic medication.

30 (C) Whether or not the defendant presents a danger to others if  
31 he or she is not treated with antipsychotic medication.

32 (D) Whether the defendant has a mental illness for which  
33 medications are the only effective treatment.

34 (E) Whether there are any side effects from the medication  
35 currently being experienced by the defendant that would interfere  
36 with the defendant's ability to collaborate with counsel.

37 (F) Whether there are any effective alternatives to medication.

38 (G) How quickly the medication is likely to bring the defendant  
39 to competency.

1 (H) Whether the treatment plan includes methods other than  
2 medication to restore the defendant to competency.

3 (I) A statement, if applicable, that no medication is likely to  
4 restore the defendant to competency.

5 (3) After reviewing the reports, the court shall determine whether  
6 or not grounds for the order authorizing involuntary administration  
7 of antipsychotic medication still exist and shall do one of the  
8 following:

9 (A) If the original grounds for involuntary medication still exist,  
10 the order authorizing the treating facility to involuntarily administer  
11 antipsychotic medication to the defendant shall remain in effect.

12 (B) If the original grounds for involuntary medication no longer  
13 exist, and there is no other basis for involuntary administration of  
14 antipsychotic medication, the order for the involuntary  
15 administration of antipsychotic medication shall be vacated.

16 (C) If the original grounds for involuntary medication no longer  
17 exist, and the report states that there is another basis for involuntary  
18 administration of antipsychotic medication, the court shall set a  
19 hearing within 21 days to determine whether the order for the  
20 involuntary administration of antipsychotic medication shall be  
21 vacated or whether a new order for the involuntary administration  
22 of antipsychotic medication shall be issued. The hearing shall  
23 proceed as set forth in subparagraph (B) of paragraph (2) of  
24 subdivision (a).

25 (4) Any defendant who has been committed or has been on  
26 outpatient status for 18 months and is still hospitalized or on  
27 outpatient status shall be returned to the committing court where  
28 a hearing shall be held pursuant to the procedures set forth in  
29 Section 1369. The court shall transmit a copy of its order to the  
30 community program director or a designee.

31 (5) If it is determined by the court that no treatment for the  
32 defendant's mental impairment is being conducted, the defendant  
33 shall be returned to the committing court. The court shall transmit  
34 a copy of its order to the community program director or a  
35 designee.

36 (6) At each review by the court specified in this subdivision,  
37 the court shall determine if the security level of housing and  
38 treatment is appropriate and may make an order in accordance  
39 with its determination. If the court determines that the defendant  
40 shall continue to be treated in the state hospital or on an outpatient

basis, the court shall determine issues concerning administration of antipsychotic medication, as set forth in subparagraph (B) of paragraph (2) of subdivision (a).

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, *but no later than 90 days prior to the expiration of the defendant's term of commitment*, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which criminal charges are pending.

(4) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, ~~Part Act~~ (*Part 1* (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

*SEC. 1.1. Section 1370 of the Penal Code is amended to read:*

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.



1 (i) In the meantime, the court shall order that the mentally  
2 incompetent defendant be delivered by the sheriff to a state hospital  
3 for the care and treatment of the mentally disordered, as directed  
4 by the State Department of State Hospitals, or to any other available  
5 public or private treatment facility, including a local county jail  
6 treatment facility or the community-based residential treatment  
7 system established pursuant to Article 1 (commencing with Section  
8 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and  
9 Institutions Code if the facility has a secured perimeter or a locked  
10 and controlled treatment facility, approved by the community  
11 program director that will promote the defendant's speedy  
12 restoration to mental competence, or placed on outpatient status  
13 as specified in Section 1600.

14 (ii) However, if the action against the defendant who has been  
15 found mentally incompetent is on a complaint charging a felony  
16 offense specified in Section 290, the prosecutor shall determine  
17 whether the defendant previously has been found mentally  
18 incompetent to stand trial pursuant to this chapter on a charge of  
19 a Section 290 offense, or whether the defendant is currently the  
20 subject of a pending Section 1368 proceeding arising out of a  
21 charge of a Section 290 offense. If either determination is made,  
22 the prosecutor shall so notify the court and defendant in writing.  
23 After this notification, and opportunity for hearing, the court shall  
24 order that the defendant be delivered by the sheriff to a state  
25 hospital, as directed by the State Department of State Hospitals,  
26 or other secure treatment facility for the care and treatment of the  
27 mentally disordered unless the court makes specific findings on  
28 the record that an alternative placement would provide more  
29 appropriate treatment for the defendant and would not pose a  
30 danger to the health and safety of others.

31 (iii) If the action against the defendant who has been found  
32 mentally incompetent is on a complaint charging a felony offense  
33 specified in Section 290 and the defendant has been denied bail  
34 pursuant to subdivision (b) of Section 12 of Article I of the  
35 California Constitution because the court has found, based upon  
36 clear and convincing evidence, a substantial likelihood that the  
37 person's release would result in great bodily harm to others, the  
38 court shall order that the defendant be delivered by the sheriff to  
39 a state hospital for the care and treatment of the mentally  
40 disordered, as directed by the State Department of State Hospitals,

1 unless the court makes specific findings on the record that an  
2 alternative placement would provide more appropriate treatment  
3 for the defendant and would not pose a danger to the health and  
4 safety of others.

5 (iv) The clerk of the court shall notify the Department of Justice  
6 in writing of any finding of mental incompetence with respect to  
7 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
8 or her state summary criminal history information.

9 (C) Upon the filing of a certificate of restoration to competence,  
10 the court shall order that the defendant be returned to court in  
11 accordance with Section 1372. The court shall transmit a copy of  
12 its order to the community program director or a designee.

13 (D) A defendant charged with a violent felony may not be  
14 delivered to a state hospital or treatment facility pursuant to this  
15 subdivision unless the state hospital or treatment facility has a  
16 secured perimeter or a locked and controlled treatment facility,  
17 and the judge determines that the public safety will be protected.

18 (E) For purposes of this paragraph, “violent felony” means an  
19 offense specified in subdivision (c) of Section 667.5.

20 (F) A defendant charged with a violent felony may be placed  
21 on outpatient status, as specified in Section 1600, only if the court  
22 finds that the placement will not pose a danger to the health or  
23 safety of others. If the court places a defendant charged with a  
24 violent felony on outpatient status, as specified in Section 1600,  
25 the court ~~must~~ *shall* serve copies of the placement order on defense  
26 counsel, the sheriff in the county where the defendant will be  
27 ~~placed~~ *placed*, and the district attorney for the county in which the  
28 violent felony charges are pending against the defendant.

29 (2) Prior to making the order directing that the defendant be  
30 committed to the State Department of State Hospitals or other  
31 treatment facility or placed on outpatient status, the court shall  
32 proceed as follows:

33 (A) The court shall order the community program director or a  
34 designee to evaluate the defendant and to submit to the court within  
35 15 judicial days of the order a written recommendation as to  
36 whether the defendant should be required to undergo outpatient  
37 treatment, or *be* committed to the State Department of State  
38 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*  
39 be admitted to a state hospital or other treatment facility or placed  
40 on outpatient status under this section without having been

1 evaluated by the community program director or a designee. The  
2 community program director or designee shall evaluate the  
3 appropriate placement for the defendant between the State  
4 Department of State Hospitals, a local county jail treatment facility,  
5 or the community-based residential treatment system based upon  
6 guidelines provided by the State Department of State Hospitals.  
7 If a local county jail treatment facility is selected, the State  
8 Department of State Hospitals shall provide treatment at the county  
9 jail treatment facility and reimburse the county jail treatment  
10 facility for the reasonable costs of the bed during the treatment. If  
11 the community-based residential treatment system is selected, the  
12 State Department of State Hospitals shall provide reimbursement  
13 to the community-based residential treatment system for the cost  
14 of treatment as negotiated with the State Department of State  
15 Hospitals. The six-month limitation in Section 1369.1 shall not  
16 apply to individuals deemed incompetent to stand trial who are  
17 being treated to restore competency within a county jail treatment  
18 facility pursuant to this section.

19 (B) The court shall hear and determine whether the *defendant*  
20 *lacks capacity to make decisions regarding the administration of*  
21 *antipsychotic medication. The court shall consider opinions in the*  
22 *reports prepared pursuant to subdivision (a) of Section 1369, as*  
23 *applicable to the issue of whether the defendant lacks capacity to*  
24 *make decisions regarding the administration of antipsychotic*  
25 *medication, and shall proceed as follows:*

26 (i) The court shall hear and determine whether any of the  
27 following is true:

28 (I) The defendant lacks capacity to make decisions regarding  
29 antipsychotic medication, the defendant's mental disorder requires  
30 medical treatment with antipsychotic medication, and, if the  
31 defendant's mental disorder is not treated with antipsychotic  
32 medication, it is probable that serious harm to the physical or  
33 mental health of the patient will result. Probability of serious harm  
34 to the physical or mental health of the defendant requires evidence  
35 that the defendant is presently suffering adverse effects to his or  
36 her physical or mental health, or the defendant has previously  
37 suffered these effects as a result of a mental disorder and his or  
38 her condition is substantially deteriorating. The fact that a  
39 defendant has a diagnosis of a mental disorder does not alone

1 establish probability of serious harm to the physical or mental  
2 health of the defendant.

3 (II) The defendant is a danger to others, in that the defendant  
4 has inflicted, attempted to inflict, or made a serious threat of  
5 inflicting substantial physical harm on another while in custody,  
6 or the defendant had inflicted, attempted to inflict, or made a  
7 serious threat of inflicting substantial physical harm on another  
8 that resulted in his or her being taken into custody, and the  
9 defendant presents, as a result of mental disorder or mental defect,  
10 a demonstrated danger of inflicting substantial physical harm on  
11 others. Demonstrated danger may be based on an assessment of  
12 the defendant's present mental condition, including a consideration  
13 of past behavior of the defendant within six years prior to the time  
14 the defendant last attempted to inflict, inflicted, or threatened to  
15 inflict substantial physical harm on another, and other relevant  
16 evidence.

17 (III) The people have charged the defendant with a serious crime  
18 against the person or property, involuntary administration of  
19 antipsychotic medication is substantially likely to render the  
20 defendant competent to stand trial, the medication is unlikely to  
21 have side effects that interfere with the defendant's ability to  
22 understand the nature of the criminal proceedings or to assist  
23 counsel in the conduct of a defense in a reasonable manner, less  
24 intrusive treatments are unlikely to have substantially the same  
25 results, and antipsychotic medication is in the patient's best medical  
26 interest in light of his or her medical condition.

27 (ii) If the court finds any of the conditions described in clause  
28 (i) to be true, the court shall issue an order authorizing ~~the treatment~~  
29 ~~facility to involuntarily administer~~ *involuntary administration of*  
30 antipsychotic medication to the defendant when and as prescribed  
31 by the defendant's treating ~~psychiatrist~~ *psychiatrist at any facility*  
32 *housing the defendant for purposes of this chapter. The order shall*  
33 *be valid for no more than one year, pursuant to subparagraph (A)*  
34 *of paragraph (7).* The court shall not order involuntary  
35 administration of psychotropic medication under subclause (III)  
36 of clause (i) unless the court has first found that the defendant does  
37 not meet the criteria for involuntary administration of psychotropic  
38 medication under subclause (I) of clause (i) and does not meet the  
39 criteria under subclause (II) of clause (i).

1 (iii) In all cases, the treating hospital, facility, or program may  
2 administer medically appropriate antipsychotic medication  
3 prescribed by a psychiatrist in an emergency as described in  
4 subdivision (m) of Section 5008 of the Welfare and Institutions  
5 Code.

6 (iv) If the court has determined that the defendant has the  
7 capacity to make decisions regarding antipsychotic medication,  
8 and if the defendant, with advice of his or her counsel, consents,  
9 the court order of commitment shall include confirmation that  
10 antipsychotic medication may be given to the defendant as  
11 prescribed by a treating psychiatrist pursuant to the defendant's  
12 consent. The commitment order shall also indicate that, if the  
13 defendant withdraws consent for antipsychotic medication, after  
14 the treating psychiatrist complies with the provisions of  
15 subparagraph (C), the defendant shall be returned to court for a  
16 hearing in accordance with subparagraphs (C) and (D) regarding  
17 whether antipsychotic medication shall be administered  
18 involuntarily.

19 (v) If the court has determined that the defendant has the  
20 capacity to make decisions regarding antipsychotic medication  
21 and if the defendant, with advice from his or her counsel, does not  
22 consent, the court order for commitment shall indicate that, after  
23 the treating psychiatrist complies with the provisions of  
24 subparagraph (C), the defendant shall be returned to court for a  
25 hearing in accordance with subparagraphs (C) and (D) regarding  
26 whether antipsychotic medication shall be administered  
27 involuntarily.

28 (vi) Any report made pursuant to paragraph (1) of subdivision  
29 (b) shall include a description of any antipsychotic medication  
30 administered to the defendant and its effects and side effects,  
31 including effects on the defendant's appearance or behavior that  
32 would affect the defendant's ability to understand the nature of  
33 the criminal proceedings or to assist counsel in the conduct of a  
34 defense in a reasonable manner. During the time the defendant is  
35 confined in a state hospital or other treatment facility or placed on  
36 outpatient status, either the defendant or the people may request  
37 that the court review any order made pursuant to this subdivision.  
38 The defendant, to the same extent enjoyed by other patients in the  
39 state hospital or other treatment facility, shall have the right to

1 contact the patients' rights advocate regarding his or her rights  
2 under this section.

3 (C) If the defendant consented to antipsychotic medication as  
4 described in clause (iv) of subparagraph (B), but subsequently  
5 withdraws his or her consent, or, if involuntary antipsychotic  
6 medication was not ordered pursuant to clause (v) of subparagraph  
7 (B), and the treating psychiatrist determines that antipsychotic  
8 medication has become medically necessary and appropriate, the  
9 treating psychiatrist shall make efforts to obtain informed consent  
10 from the defendant for antipsychotic medication. If informed  
11 consent is not obtained from the defendant, and the treating  
12 psychiatrist is of the opinion that the defendant lacks capacity to  
13 make decisions regarding antipsychotic medication based on the  
14 conditions described in subclause (I) or (II) of clause (i) of  
15 subparagraph (B), the treating psychiatrist shall certify whether  
16 the lack of capacity and any applicable conditions described above  
17 exist. That certification shall contain an assessment of the current  
18 mental status of the defendant and the opinion of the treating  
19 psychiatrist that involuntary antipsychotic medication has become  
20 medically necessary and appropriate.

21 (D) (i) If the treating psychiatrist certifies that antipsychotic  
22 medication has become medically necessary and appropriate  
23 pursuant to subparagraph (C), antipsychotic medication may be  
24 administered to the defendant for not more than 21 days, provided,  
25 however, that, within 72 hours of the certification, the defendant  
26 is provided a medication review hearing before an administrative  
27 law judge to be conducted at the facility where the defendant is  
28 receiving treatment. The treating psychiatrist shall present the case  
29 for the certification for involuntary treatment and the defendant  
30 shall be represented by an attorney or a patients' rights advocate.  
31 The attorney or patients' rights advocate shall be appointed to meet  
32 with the defendant no later than one day prior to the medication  
33 review hearing to review the defendant's rights at the medication  
34 review hearing, discuss the process, answer questions or concerns  
35 regarding involuntary medication or the hearing, assist the  
36 defendant in preparing for the hearing and advocating for his or  
37 her interests at the hearing, review the panel's final determination  
38 following the hearing, advise the defendant of his or her right to  
39 judicial review of the panel's decision, and provide the defendant  
40 with referral information for legal advice on the subject. The

1 defendant shall also have the following rights with respect to the  
2 medication review hearing:

3 (I) To ~~being~~ *be* given timely access to the defendant's records.

4 (II) To be present at the hearing, unless the defendant waives  
5 that right.

6 (III) To present evidence at the hearing.

7 (IV) To question persons presenting evidence supporting  
8 involuntary medication.

9 (V) To make reasonable requests for attendance of witnesses  
10 on the defendant's behalf.

11 (VI) To a hearing conducted in an impartial and informal  
12 manner.

13 (ii) If the administrative law judge determines that the defendant  
14 either meets the criteria specified in subclause (I) of clause (i) of  
15 subparagraph (B), or meets the criteria specified in subclause (II)  
16 of clause (i) of subparagraph (B), then antipsychotic medication  
17 may continue to be administered to the defendant for the 21-day  
18 certification period. Concurrently with the treating psychiatrist's  
19 certification, the treating psychiatrist shall file a copy of the  
20 certification and a petition with the court for issuance of an order  
21 to administer antipsychotic medication beyond the 21-day  
22 certification period. For purposes of this subparagraph, the treating  
23 psychiatrist shall not be required to pay or deposit any fee for the  
24 filing of the petition or other document or paper related to the  
25 petition.

26 (iii) If the administrative law judge disagrees with the  
27 certification, medication may not be administered involuntarily  
28 until the court determines that antipsychotic medication should be  
29 administered pursuant to this section.

30 (iv) The court shall provide notice to the prosecuting attorney  
31 and to the attorney representing the defendant, and shall hold a  
32 hearing, no later than 18 days from the date of the certification, to  
33 determine whether antipsychotic medication should be ordered  
34 beyond the certification period.

35 (v) If, as a result of the hearing, the court determines that  
36 antipsychotic medication should be administered beyond the  
37 certification period, the court shall issue an order authorizing the  
38 administration of that medication.

39 (vi) The court shall render its decision on the petition and issue  
40 its order no later than three calendar days after the hearing and, in

1 any event, no later than the expiration of the 21-day certification  
2 period.

3 (vii) *If the administrative law judge upholds the certification*  
4 *pursuant to clause (ii), the court may, for a period not to exceed*  
5 *14 days, extend the certification and continue the hearing pursuant*  
6 *to stipulation between the parties or upon a finding of good cause.*  
7 *In determining good cause, the court may review the petition filed*  
8 *with the court, the administrative law judge's order, and any*  
9 *additional testimony needed by the court to determine if it is*  
10 *appropriate to continue medication beyond the 21-day certification*  
11 *and for a period of up to 14 days.*

12 (viii) *The district attorney, county counsel, or representative of*  
13 *any facility where a defendant found incompetent to stand trial is*  
14 *committed may petition the court for an order to administer*  
15 *involuntary medication pursuant to the criteria set forth in*  
16 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*  
17 *order is reviewable as provided in paragraph (7).*

18 (3) When the court orders that the defendant be committed to  
19 the State Department of State Hospitals or other public or private  
20 treatment facility, the court shall provide copies of the following  
21 documents prior to the admission of the defendant to the State  
22 Department of State Hospitals or other treatment facility where  
23 the defendant is to be committed:

24 (A) The commitment order, including a specification of the  
25 charges.

26 (B) A computation or statement setting forth the maximum term  
27 of commitment in accordance with subdivision (c).

28 (C) A computation or statement setting forth the amount of  
29 credit for time served, if any, to be deducted from the maximum  
30 term of commitment.

31 (D) State summary criminal history information.

32 (E) Any arrest reports prepared by the police department or  
33 other law enforcement agency.

34 (F) Any court-ordered psychiatric examination or evaluation  
35 reports.

36 (G) The community program director's placement  
37 recommendation report.

38 (H) Records of any finding of mental incompetence pursuant  
39 to this chapter arising out of a complaint charging a felony offense



1 specified in Section 290 or any pending Section 1368 proceeding  
2 arising out of a charge of a Section 290 offense.

3 (I) Any medical records.

4 (4) When the defendant is committed to a treatment facility  
5 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
6 court makes the findings specified in clause (ii) or (iii) of  
7 subparagraph (B) of paragraph (1) to assign the defendant to a  
8 treatment facility other than a state hospital or other secure  
9 treatment facility, the court shall order that notice be given to the  
10 appropriate law enforcement agency or agencies having local  
11 jurisdiction at the site of the placement facility of any finding of  
12 mental incompetence pursuant to this chapter arising out of a  
13 charge of a Section 290 offense.

14 (5) When directing that the defendant be confined in a state  
15 hospital pursuant to this subdivision, the court shall commit the  
16 patient to the State Department of State Hospitals.

17 (6) (A) If the defendant is committed or transferred to the State  
18 Department of State Hospitals pursuant to this section, the court  
19 may, upon receiving the written recommendation of the medical  
20 director of the state hospital and the community program director  
21 that the defendant be transferred to a public or private treatment  
22 facility approved by the community program director, order the  
23 defendant transferred to that facility. If the defendant is committed  
24 or transferred to a public or private treatment facility approved by  
25 the community program director, the court may, upon receiving  
26 the written recommendation of the community program director,  
27 transfer the defendant to the State Department of State Hospitals  
28 or to another public or private treatment facility approved by the  
29 community program director. In the event of dismissal of the  
30 criminal charges before the defendant recovers competence, the  
31 person shall be subject to the applicable provisions of the  
32 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
33 5000) of Division 5 of the Welfare and Institutions Code). If either  
34 the defendant or the prosecutor chooses to contest either kind of  
35 order of transfer, a petition may be filed in the court for a hearing,  
36 which shall be held if the court determines that sufficient grounds  
37 exist. At the hearing, the prosecuting attorney or the defendant  
38 may present evidence bearing on the order of transfer. The court  
39 shall use the same standards as are used in conducting probation  
40 revocation hearings pursuant to Section 1203.2.

1 Prior to making an order for transfer under this section, the court  
2 shall notify the defendant, the attorney of record for the defendant,  
3 the prosecuting attorney, and the community program director or  
4 a designee.

5 (B) If the defendant is initially committed to the State  
6 Department of State Hospitals or secure treatment facility pursuant  
7 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is  
8 subsequently transferred to any other facility, copies of the  
9 documents specified in paragraph (3) shall be taken with the  
10 defendant to each subsequent facility to which the defendant is  
11 transferred. The transferring facility shall also notify the appropriate  
12 law enforcement agency or agencies having local jurisdiction at  
13 the site of the new facility that the defendant is a person subject  
14 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

15 (7) (A) An order by the court authorizing involuntary  
16 medication of the defendant shall be valid for no more than one  
17 year. The court shall review the order ~~six months after the order~~  
18 ~~was made at the time of the review of the initial report and the~~  
19 *six-month progress reports pursuant to paragraph (1) of*  
20 *subdivision (b) to determine if the grounds for the authorization*  
21 *remain. In the review, the court shall consider the reports of the*  
22 *treating psychiatrist or psychiatrists and the defendant's patients'*  
23 *rights advocate or attorney. The court may require testimony from*  
24 *the treating psychiatrist or psychiatrists and the patients' rights*  
25 *advocate or attorney, if necessary. The court may continue the*  
26 *order authorizing involuntary medication for up to another six*  
27 *months, or vacate the order, or make any other appropriate order.*

28 (B) *Within 60 days before the expiration of the one-year*  
29 *involuntary medication order, the district attorney, county counsel,*  
30 *or representative of any facility where a defendant found*  
31 *incompetent to stand trial is committed may petition the committing*  
32 *court for a renewal, subject to the same conditions and*  
33 *requirements as in subparagraph (A). The petition shall include*  
34 *the basis for involuntary medication set forth in clause (i) of*  
35 *subparagraph (B) of paragraph (2). Notice of the petition shall*  
36 *be provided to the defendant, the defendant's attorney, and the*  
37 *district attorney. The court shall hear and determine whether the*  
38 *defendant continues to meet the criteria set forth in clause (i) of*  
39 *subparagraph (B) of paragraph (2). The hearing on any petition*

1 *to renew an order for involuntary medication shall be conducted*  
2 *prior to the expiration of the current order.*

3 (b) (1) Within 90 days of a commitment made pursuant to  
4 subdivision (a), the medical director of the state hospital or other  
5 treatment facility to which the defendant is confined shall make a  
6 written report to the court and the community program director  
7 for the county or region of commitment, or a designee, concerning  
8 the defendant's progress toward recovery of mental ~~competence~~.  
9 ~~competence and whether the administration of antipsychotic~~  
10 ~~medication remains necessary.~~ If the defendant is on outpatient  
11 status, the outpatient treatment staff shall make a written report to  
12 the community program director concerning the defendant's  
13 progress toward recovery of mental competence. Within 90 days  
14 of placement on outpatient status, the community program director  
15 shall report to the court on this matter. If the defendant has not  
16 recovered mental competence, but the report discloses a substantial  
17 likelihood that the defendant will regain mental competence in the  
18 foreseeable future, the defendant shall remain in the state hospital  
19 or other treatment facility or on outpatient status. Thereafter, at  
20 six-month intervals or until the defendant becomes mentally  
21 competent, if the defendant is confined in a treatment facility, the  
22 medical director of the hospital or person in charge of the facility  
23 shall report in writing to the court and the community program  
24 director or a designee regarding the defendant's progress toward  
25 recovery of mental ~~competence~~. ~~competence and whether the~~  
26 ~~administration of antipsychotic medication remains necessary.~~ If  
27 the defendant is on outpatient status, after the initial 90-day report,  
28 the outpatient treatment staff shall report to the community program  
29 director on the defendant's progress toward recovery, and the  
30 community program director shall report to the court on this matter  
31 at six-month intervals. A copy of these reports shall be provided  
32 to the prosecutor and defense counsel by the court. ~~If~~

33 (A) *If the report indicates that there is no substantial likelihood*  
34 *that the defendant will regain mental competence in the foreseeable*  
35 *future, the committing court shall order the defendant to be returned*  
36 *to the court for proceedings pursuant to paragraph (2) of*  
37 *subdivision (e). (c) no later than 10 days following the receipt of*  
38 *the report.* The court shall transmit a copy of its order to the  
39 community program director or a designee.

1     (B) *If the report indicates that there is no substantial likelihood*  
2 *that the defendant will regain mental competence in the foreseeable*  
3 *future, the medical director of the state hospital or other treatment*  
4 *facility to which the defendant is confined shall do both of the*  
5 *following:*

6     (i) *Promptly notify and provide a copy of the report to the*  
7 *defense counsel and the district attorney.*

8     (ii) *Provide a separate notification, in compliance with*  
9 *applicable privacy laws, to the committing county's sheriff that*  
10 *transportation will be needed for the patient.*

11     (2) If the court has issued an order authorizing the treating  
12 facility to involuntarily administer antipsychotic medication to the  
13 defendant, the reports made ~~at six-month intervals~~ pursuant to  
14 paragraph (1) concerning the defendant's progress toward  
15 regaining competency shall also consider the issue of involuntary  
16 medication. Each report shall include, but is not limited to, all the  
17 following:

18     (A) Whether or not the defendant has the capacity to make  
19 decisions concerning antipsychotic medication.

20     (B) If the defendant lacks capacity to make decisions concerning  
21 antipsychotic medication, whether the defendant risks serious harm  
22 to his or her physical or mental health if not treated with  
23 antipsychotic medication.

24     (C) Whether or not the defendant presents a danger to others if  
25 he or she is not treated with antipsychotic medication.

26     (D) Whether the defendant has a mental illness for which  
27 medications are the only effective treatment.

28     (E) Whether there are any side effects from the medication  
29 currently being experienced by the defendant that would interfere  
30 with the defendant's ability to collaborate with counsel.

31     (F) Whether there are any effective alternatives to medication.

32     (G) How quickly the medication is likely to bring the defendant  
33 to competency.

34     (H) Whether the treatment plan includes methods other than  
35 medication to restore the defendant to competency.

36     (I) A statement, if applicable, that no medication is likely to  
37 restore the defendant to competency.

38     (3) After reviewing the reports, the court shall determine whether  
39 or not grounds for the order authorizing involuntary administration

1 of antipsychotic medication still exist and shall do one of the  
2 following:

3 (A) If the original grounds for involuntary medication still exist,  
4 the order authorizing the treating facility to involuntarily administer  
5 antipsychotic medication to the defendant shall remain in effect.

6 (B) If the original grounds for involuntary medication no longer  
7 exist, and there is no other basis for involuntary administration of  
8 antipsychotic medication, the order for the involuntary  
9 administration of antipsychotic medication shall be vacated.

10 (C) If the original grounds for involuntary medication no longer  
11 exist, and the report states that there is another basis for involuntary  
12 administration of antipsychotic medication, the court shall set a  
13 hearing within 21 days to determine whether the order for the  
14 involuntary administration of antipsychotic medication shall be  
15 vacated or whether a new order for the involuntary administration  
16 of antipsychotic medication shall be issued. The hearing shall  
17 proceed as set forth in subparagraph (B) of paragraph (2) of  
18 subdivision (a).

19 (4) Any defendant who has been committed or has been on  
20 outpatient status for 18 months and is still hospitalized or on  
21 outpatient status shall be returned to the committing court where  
22 a hearing shall be held pursuant to the procedures set forth in  
23 Section 1369. The court shall transmit a copy of its order to the  
24 community program director or a designee.

25 (5) If it is determined by the court that no treatment for the  
26 defendant's mental impairment is being conducted, the defendant  
27 shall be returned to the committing court. The court shall transmit  
28 a copy of its order to the community program director or a  
29 designee.

30 (6) At each review by the court specified in this subdivision,  
31 the court shall determine if the security level of housing and  
32 treatment is appropriate and may make an order in accordance  
33 with its determination. If the court determines that the defendant  
34 shall continue to be treated in the state hospital or on an outpatient  
35 basis, the court shall determine issues concerning administration  
36 of antipsychotic medication, as set forth in subparagraph (B) of  
37 paragraph (2) of subdivision (a).

38 (c) (1) At the end of three years from the date of commitment  
39 or a period of commitment equal to the maximum term of  
40 imprisonment provided by law for the most serious offense charged

1 in the information, indictment, or misdemeanor complaint,  
2 whichever is shorter, *but no later than 90 days prior to the*  
3 *expiration of the defendant's term of commitment*, a defendant  
4 who has not recovered mental competence shall be returned to the  
5 committing court. The court shall notify the community program  
6 director or a designee of the return and of any resulting court  
7 orders.

8 (2) Whenever any defendant is returned to the court pursuant  
9 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this  
10 subdivision and it appears to the court that the defendant is gravely  
11 disabled, as defined in subparagraph (B) of paragraph (1) of  
12 subdivision (h) of Section 5008 of the Welfare and Institutions  
13 Code, the court shall order the conservatorship investigator of the  
14 county of commitment of the defendant to initiate conservatorship  
15 proceedings for the defendant pursuant to Chapter 3 (commencing  
16 with Section 5350) of Part 1 of Division 5 of the Welfare and  
17 Institutions Code. Any hearings required in the conservatorship  
18 proceedings shall be held in the superior court in the county that  
19 ordered the commitment. The court shall transmit a copy of the  
20 order directing initiation of conservatorship proceedings to the  
21 community program director or a designee, the sheriff and the  
22 district attorney of the county in which criminal charges are  
23 pending, and the defendant's counsel of record. The court shall  
24 notify the community program director or a designee, the sheriff  
25 and district attorney of the county in which criminal charges are  
26 pending, and the defendant's counsel of record of the outcome of  
27 the conservatorship proceedings.

28 (3) If a change in placement is proposed for a defendant who  
29 is committed pursuant to subparagraph (B) of paragraph (1) of  
30 subdivision (h) of Section 5008 of the Welfare and Institutions  
31 Code, the court shall provide notice and an opportunity to be heard  
32 with respect to the proposed placement of the defendant to the  
33 sheriff and the district attorney of the county in which criminal  
34 charges are pending.

35 (4) If the defendant is confined in a treatment facility, a copy  
36 of any report to the committing court regarding the defendant's  
37 progress toward recovery of mental competence shall be provided  
38 by the committing court to the prosecutor and to the defense  
39 counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, ~~Part Act~~ (*Part 1*) (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, “community program director” means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, “secure treatment facility” shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

*SEC. 1.2. Section 1370 of the Penal Code is amended to read:*

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged *or hearing on the alleged violation* shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, ~~the trial or trial, the hearing on the alleged violation, or the judgment~~ shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a local county jail

1 treatment facility or the community-based residential treatment  
2 system established pursuant to Article 1 (commencing with Section  
3 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and  
4 Institutions Code if the facility has a secured perimeter or a locked  
5 and controlled treatment facility, approved by the community  
6 program director that will promote the defendant's speedy  
7 restoration to mental competence, or placed on outpatient status  
8 as specified in Section 1600.

9 (ii) However, if the action against the defendant who has been  
10 found mentally incompetent is on a complaint charging a felony  
11 offense specified in Section 290, the prosecutor shall determine  
12 whether the defendant previously has been found mentally  
13 incompetent to stand trial pursuant to this chapter on a charge of  
14 a Section 290 offense, or whether the defendant is currently the  
15 subject of a pending Section 1368 proceeding arising out of a  
16 charge of a Section 290 offense. If either determination is made,  
17 the prosecutor shall so notify the court and defendant in writing.  
18 After this notification, and opportunity for hearing, the court shall  
19 order that the defendant be delivered by the sheriff to a state  
20 hospital, as directed by the State Department of State Hospitals,  
21 or other secure treatment facility for the care and treatment of the  
22 mentally disordered unless the court makes specific findings on  
23 the record that an alternative placement would provide more  
24 appropriate treatment for the defendant and would not pose a  
25 danger to the health and safety of others.

26 (iii) If the action against the defendant who has been found  
27 mentally incompetent is on a complaint charging a felony offense  
28 specified in Section 290 and the defendant has been denied bail  
29 pursuant to subdivision (b) of Section 12 of Article I of the  
30 California Constitution because the court has found, based upon  
31 clear and convincing evidence, a substantial likelihood that the  
32 person's release would result in great bodily harm to others, the  
33 court shall order that the defendant be delivered by the sheriff to  
34 a state hospital for the care and treatment of the mentally  
35 disordered, as directed by the State Department of State Hospitals,  
36 unless the court makes specific findings on the record that an  
37 alternative placement would provide more appropriate treatment  
38 for the defendant and would not pose a danger to the health and  
39 safety of others.



1 (iv) The clerk of the court shall notify the Department of Justice  
2 in writing of any finding of mental incompetence with respect to  
3 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
4 or her state summary criminal history information.

5 (C) Upon the filing of a certificate of restoration to competence,  
6 the court shall order that the defendant be returned to court in  
7 accordance with Section 1372. The court shall transmit a copy of  
8 its order to the community program director or a designee.

9 (D) A defendant charged with a violent felony may not be  
10 delivered to a state hospital or treatment facility pursuant to this  
11 subdivision unless the state hospital or treatment facility has a  
12 secured perimeter or a locked and controlled treatment facility,  
13 and the judge determines that the public safety will be protected.

14 (E) For purposes of this paragraph, “violent felony” means an  
15 offense specified in subdivision (c) of Section 667.5.

16 (F) A defendant charged with a violent felony may be placed  
17 on outpatient status, as specified in Section 1600, only if the court  
18 finds that the placement will not pose a danger to the health or  
19 safety of others. If the court places a defendant charged with a  
20 violent felony on outpatient status, as specified in Section 1600,  
21 the court ~~must~~ *shall* serve copies of the placement order on defense  
22 counsel, the sheriff in the county where the defendant will be  
23 ~~placed~~ *placed*, and the district attorney for the county in which the  
24 violent felony charges are pending against the defendant.

25 (2) Prior to making the order directing that the defendant be  
26 committed to the State Department of State Hospitals or other  
27 treatment facility or placed on outpatient status, the court shall  
28 proceed as follows:

29 (A) The court shall order the community program director or a  
30 designee to evaluate the defendant and to submit to the court within  
31 15 judicial days of the order a written recommendation as to  
32 whether the defendant should be required to undergo outpatient  
33 treatment, or *be* committed to the State Department of State  
34 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*  
35 be admitted to a state hospital or other treatment facility or placed  
36 on outpatient status under this section without having been  
37 evaluated by the community program director or a designee. The  
38 community program director or designee shall evaluate the  
39 appropriate placement for the defendant between the State  
40 Department of State Hospitals, a local county jail treatment facility,

1 or the community-based residential treatment system based upon  
2 guidelines provided by the State Department of State Hospitals.  
3 If a local county jail treatment facility is selected, the State  
4 Department of State Hospitals shall provide treatment at the county  
5 jail treatment facility and reimburse the county jail treatment  
6 facility for the reasonable costs of the bed during the treatment. If  
7 the community-based residential treatment system is selected, the  
8 State Department of State Hospitals shall provide reimbursement  
9 to the community-based residential treatment system for the cost  
10 of treatment as negotiated with the State Department of State  
11 Hospitals. The six-month limitation in Section 1369.1 shall not  
12 apply to individuals deemed incompetent to stand trial who are  
13 being treated to restore competency within a county jail treatment  
14 facility pursuant to this section.

15 (B) The court shall hear and determine whether the defendant  
16 lacks capacity to make decisions regarding the administration of  
17 antipsychotic medication, and shall proceed as follows:

18 (i) The court shall hear and determine whether any of the  
19 following is true:

20 (I) The defendant lacks capacity to make decisions regarding  
21 antipsychotic medication, the defendant's mental disorder requires  
22 medical treatment with antipsychotic medication, and, if the  
23 defendant's mental disorder is not treated with antipsychotic  
24 medication, it is probable that serious harm to the physical or  
25 mental health of the patient will result. Probability of serious harm  
26 to the physical or mental health of the defendant requires evidence  
27 that the defendant is presently suffering adverse effects to his or  
28 her physical or mental health, or the defendant has previously  
29 suffered these effects as a result of a mental disorder and his or  
30 her condition is substantially deteriorating. The fact that a  
31 defendant has a diagnosis of a mental disorder does not alone  
32 establish probability of serious harm to the physical or mental  
33 health of the defendant.

34 (II) The defendant is a danger to others, in that the defendant  
35 has inflicted, attempted to inflict, or made a serious threat of  
36 inflicting substantial physical harm on another while in custody,  
37 or the defendant had inflicted, attempted to inflict, or made a  
38 serious threat of inflicting substantial physical harm on another  
39 that resulted in his or her being taken into custody, and the  
40 defendant presents, as a result of mental disorder or mental defect,

1 a demonstrated danger of inflicting substantial physical harm on  
2 others. Demonstrated danger may be based on an assessment of  
3 the defendant's present mental condition, including a consideration  
4 of past behavior of the defendant within six years prior to the time  
5 the defendant last attempted to inflict, inflicted, or threatened to  
6 inflict substantial physical harm on another, and other relevant  
7 evidence.

8 (III) The people have charged the defendant with a serious crime  
9 against the person or property, involuntary administration of  
10 antipsychotic medication is substantially likely to render the  
11 defendant competent to stand trial, the medication is unlikely to  
12 have side effects that interfere with the defendant's ability to  
13 understand the nature of the criminal proceedings or to assist  
14 counsel in the conduct of a defense in a reasonable manner, less  
15 intrusive treatments are unlikely to have substantially the same  
16 results, and antipsychotic medication is in the patient's best medical  
17 interest in light of his or her medical condition.

18 (ii) If the court finds any of the conditions described in clause  
19 (i) to be true, the court shall issue an order authorizing the treatment  
20 facility to involuntarily administer antipsychotic medication to the  
21 defendant when and as prescribed by the defendant's treating  
22 psychiatrist. The court shall not order involuntary administration  
23 of psychotropic medication under subclause (III) of clause (i)  
24 unless the court has first found that the defendant does not meet  
25 the criteria for involuntary administration of psychotropic  
26 medication under subclause (I) of clause (i) and does not meet the  
27 criteria under subclause (II) of clause (i).

28 (iii) In all cases, the treating hospital, facility, or program may  
29 administer medically appropriate antipsychotic medication  
30 prescribed by a psychiatrist in an emergency as described in  
31 subdivision (m) of Section 5008 of the Welfare and Institutions  
32 Code.

33 (iv) If the court has determined that the defendant has the  
34 capacity to make decisions regarding antipsychotic medication,  
35 and if the defendant, with advice of his or her counsel, consents,  
36 the court order of commitment shall include confirmation that  
37 antipsychotic medication may be given to the defendant as  
38 prescribed by a treating psychiatrist pursuant to the defendant's  
39 consent. The commitment order shall also indicate that, if the  
40 defendant withdraws consent for antipsychotic medication, after

1 the treating psychiatrist complies with the provisions of  
2 subparagraph (C), the defendant shall be returned to court for a  
3 hearing in accordance with subparagraphs (C) and (D) regarding  
4 whether antipsychotic medication shall be administered  
5 involuntarily.

6 (v) If the court has determined that the defendant has the  
7 capacity to make decisions regarding antipsychotic medication  
8 and if the defendant, with advice from his or her counsel, does not  
9 consent, the court order for commitment shall indicate that, after  
10 the treating psychiatrist complies with the provisions of  
11 subparagraph (C), the defendant shall be returned to court for a  
12 hearing in accordance with subparagraphs (C) and (D) regarding  
13 whether antipsychotic medication shall be administered  
14 involuntarily.

15 (vi) Any report made pursuant to paragraph (1) of subdivision  
16 (b) shall include a description of any antipsychotic medication  
17 administered to the defendant and its effects and side effects,  
18 including effects on the defendant's appearance or behavior that  
19 would affect the defendant's ability to understand the nature of  
20 the criminal proceedings or to assist counsel in the conduct of a  
21 defense in a reasonable manner. During the time the defendant is  
22 confined in a state hospital or other treatment facility or placed on  
23 outpatient status, either the defendant or the people may request  
24 that the court review any order made pursuant to this subdivision.  
25 The defendant, to the same extent enjoyed by other patients in the  
26 state hospital or other treatment facility, shall have the right to  
27 contact the patients' rights advocate regarding his or her rights  
28 under this section.

29 (C) If the defendant consented to antipsychotic medication as  
30 described in clause (iv) of subparagraph (B), but subsequently  
31 withdraws his or her consent, or, if involuntary antipsychotic  
32 medication was not ordered pursuant to clause (v) of subparagraph  
33 (B), and the treating psychiatrist determines that antipsychotic  
34 medication has become medically necessary and appropriate, the  
35 treating psychiatrist shall make efforts to obtain informed consent  
36 from the defendant for antipsychotic medication. If informed  
37 consent is not obtained from the defendant, and the treating  
38 psychiatrist is of the opinion that the defendant lacks capacity to  
39 make decisions regarding antipsychotic medication based on the  
40 conditions described in subclause (I) or (II) of clause (i) of

1 subparagraph (B), the treating psychiatrist shall certify whether  
2 the lack of capacity and any applicable conditions described above  
3 exist. That certification shall contain an assessment of the current  
4 mental status of the defendant and the opinion of the treating  
5 psychiatrist that involuntary antipsychotic medication has become  
6 medically necessary and appropriate.

7 (D) (i) If the treating psychiatrist certifies that antipsychotic  
8 medication has become medically necessary and appropriate  
9 pursuant to subparagraph (C), antipsychotic medication may be  
10 administered to the defendant for not more than 21 days, provided,  
11 however, that, within 72 hours of the certification, the defendant  
12 is provided a medication review hearing before an administrative  
13 law judge to be conducted at the facility where the defendant is  
14 receiving treatment. The treating psychiatrist shall present the case  
15 for the certification for involuntary treatment and the defendant  
16 shall be represented by an attorney or a patients' rights advocate.  
17 The attorney or patients' rights advocate shall be appointed to meet  
18 with the defendant no later than one day prior to the medication  
19 review hearing to review the defendant's rights at the medication  
20 review hearing, discuss the process, answer questions or concerns  
21 regarding involuntary medication or the hearing, assist the  
22 defendant in preparing for the hearing and advocating for his or  
23 her interests at the hearing, review the panel's final determination  
24 following the hearing, advise the defendant of his or her right to  
25 judicial review of the panel's decision, and provide the defendant  
26 with referral information for legal advice on the subject. The  
27 defendant shall also have the following rights with respect to the  
28 medication review hearing:

29 (I) To ~~being~~ *be* given timely access to the defendant's records.

30 (II) To be present at the hearing, unless the defendant waives  
31 that right.

32 (III) To present evidence at the hearing.

33 (IV) To question persons presenting evidence supporting  
34 involuntary medication.

35 (V) To make reasonable requests for attendance of witnesses  
36 on the defendant's behalf.

37 (VI) To a hearing conducted in an impartial and informal  
38 manner.

39 (ii) If the administrative law judge determines that the defendant  
40 either meets the criteria specified in subclause (I) of clause (i) of

1 subparagraph (B), or meets the criteria specified in subclause (II)  
2 of clause (i) of subparagraph (B), then antipsychotic medication  
3 may continue to be administered to the defendant for the 21-day  
4 certification period. Concurrently with the treating psychiatrist's  
5 certification, the treating psychiatrist shall file a copy of the  
6 certification and a petition with the court for issuance of an order  
7 to administer antipsychotic medication beyond the 21-day  
8 certification period. For purposes of this subparagraph, the treating  
9 psychiatrist shall not be required to pay or deposit any fee for the  
10 filing of the petition or other document or paper related to the  
11 petition.

12 (iii) If the administrative law judge disagrees with the  
13 certification, medication may not be administered involuntarily  
14 until the court determines that antipsychotic medication should be  
15 administered pursuant to this section.

16 (iv) The court shall provide notice to the prosecuting attorney  
17 and to the attorney representing the defendant, and shall hold a  
18 hearing, no later than 18 days from the date of the certification, to  
19 determine whether antipsychotic medication should be ordered  
20 beyond the certification period.

21 (v) If, as a result of the hearing, the court determines that  
22 antipsychotic medication should be administered beyond the  
23 certification period, the court shall issue an order authorizing the  
24 administration of that medication.

25 (vi) The court shall render its decision on the petition and issue  
26 its order no later than three calendar days after the hearing and, in  
27 any event, no later than the expiration of the 21-day certification  
28 period.

29 (3) When the court orders that the defendant be committed to  
30 the State Department of State Hospitals or other public or private  
31 treatment facility, the court shall provide copies of the following  
32 documents prior to the admission of the defendant to the State  
33 Department of State Hospitals or other treatment facility where  
34 the defendant is to be committed:

35 (A) The commitment order, including a specification of the  
36 charges.

37 (B) A computation or statement setting forth the maximum term  
38 of commitment in accordance with subdivision (c).

1 (C) A computation or statement setting forth the amount of  
2 credit for time served, if any, to be deducted from the maximum  
3 term of commitment.

4 (D) State summary criminal history information.

5 (E) Any arrest reports prepared by the police department or  
6 other law enforcement agency.

7 (F) Any court-ordered psychiatric examination or evaluation  
8 reports.

9 (G) The community program director's placement  
10 recommendation report.

11 (H) Records of any finding of mental incompetence pursuant  
12 to this chapter arising out of a complaint charging a felony offense  
13 specified in Section 290 or any pending Section 1368 proceeding  
14 arising out of a charge of a Section 290 offense.

15 (I) Any medical records.

16 (4) When the defendant is committed to a treatment facility  
17 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
18 court makes the findings specified in clause (ii) or (iii) of  
19 subparagraph (B) of paragraph (1) to assign the defendant to a  
20 treatment facility other than a state hospital or other secure  
21 treatment facility, the court shall order that notice be given to the  
22 appropriate law enforcement agency or agencies having local  
23 jurisdiction at the site of the placement facility of any finding of  
24 mental incompetence pursuant to this chapter arising out of a  
25 charge of a Section 290 offense.

26 (5) When directing that the defendant be confined in a state  
27 hospital pursuant to this subdivision, the court shall commit the  
28 patient to the State Department of State Hospitals.

29 (6) (A) If the defendant is committed or transferred to the State  
30 Department of State Hospitals pursuant to this section, the court  
31 may, upon receiving the written recommendation of the medical  
32 director of the state hospital and the community program director  
33 that the defendant be transferred to a public or private treatment  
34 facility approved by the community program director, order the  
35 defendant transferred to that facility. If the defendant is committed  
36 or transferred to a public or private treatment facility approved by  
37 the community program director, the court may, upon receiving  
38 the written recommendation of the community program director,  
39 transfer the defendant to the State Department of State Hospitals  
40 or to another public or private treatment facility approved by the

1 community program director. In the event of dismissal of the  
2 criminal charges before the defendant recovers competence, the  
3 person shall be subject to the applicable provisions of the  
4 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
5 5000) of Division 5 of the Welfare and Institutions Code). If either  
6 the defendant or the prosecutor chooses to contest either kind of  
7 order of transfer, a petition may be filed in the court for a hearing,  
8 which shall be held if the court determines that sufficient grounds  
9 exist. At the hearing, the prosecuting attorney or the defendant  
10 may present evidence bearing on the order of transfer. The court  
11 shall use the same standards as are used in conducting probation  
12 revocation hearings pursuant to Section 1203.2.

13 Prior to making an order for transfer under this section, the court  
14 shall notify the defendant, the attorney of record for the defendant,  
15 the prosecuting attorney, and the community program director or  
16 a designee.

17 (B) If the defendant is initially committed to the State  
18 Department of State Hospitals or secure treatment facility pursuant  
19 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is  
20 subsequently transferred to any other facility, copies of the  
21 documents specified in paragraph (3) shall be taken with the  
22 defendant to each subsequent facility to which the defendant is  
23 transferred. The transferring facility shall also notify the appropriate  
24 law enforcement agency or agencies having local jurisdiction at  
25 the site of the new facility that the defendant is a person subject  
26 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

27 (7) An order by the court authorizing involuntary medication  
28 of the defendant shall be valid for no more than one year. The  
29 court shall review the order six months after the order was made  
30 to determine if the grounds for the authorization remain. In the  
31 review, the court shall consider the reports of the treating  
32 psychiatrist or psychiatrists and the defendant's patients' rights  
33 advocate or attorney. The court may require testimony from the  
34 treating psychiatrist or psychiatrists and the patients' rights  
35 advocate or attorney, if necessary. The court may continue the  
36 order authorizing involuntary medication for up to another six  
37 months, or vacate the order, or make any other appropriate order.

38 (b) (1) Within 90 days of a commitment made pursuant to  
39 subdivision (a), the medical director of the state hospital or other  
40 treatment facility to which the defendant is confined shall make a



1 written report to the court and the community program director  
2 for the county or region of commitment, or a designee, concerning  
3 the defendant's progress toward recovery of mental competence.  
4 If the defendant is on outpatient status, the outpatient treatment  
5 staff shall make a written report to the community program director  
6 concerning the defendant's progress toward recovery of mental  
7 competence. Within 90 days of placement on outpatient status, the  
8 community program director shall report to the court on this matter.  
9 If the defendant has not recovered mental competence, but the  
10 report discloses a substantial likelihood that the defendant will  
11 regain mental competence in the foreseeable future, the defendant  
12 shall remain in the state hospital or other treatment facility or on  
13 outpatient status. Thereafter, at six-month intervals or until the  
14 defendant becomes mentally competent, if the defendant is  
15 confined in a treatment facility, the medical director of the hospital  
16 or person in charge of the facility shall report in writing to the  
17 court and the community program director or a designee regarding  
18 the defendant's progress toward recovery of mental competence.  
19 If the defendant is on outpatient status, after the initial 90-day  
20 report, the outpatient treatment staff shall report to the community  
21 program director on the defendant's progress toward recovery,  
22 and the community program director shall report to the court on  
23 this matter at six-month intervals. A copy of these reports shall be  
24 provided to the prosecutor and defense counsel by the court. ~~If~~

25 (A) *If the report indicates that there is no substantial likelihood*  
26 *that the defendant will regain mental competence in the foreseeable*  
27 *future, the committing court shall order the defendant to be returned*  
28 *to the court for proceedings pursuant to paragraph (2) of*  
29 *subdivision (e). (c) no later than 10 days following receipt of the*  
30 *report.* The court shall transmit a copy of its order to the  
31 community program director or a designee.

32 (B) *If the report indicates that there is no substantial likelihood*  
33 *that the defendant will regain mental competence in the foreseeable*  
34 *future, the medical director of the state hospital or other treatment*  
35 *facility to which the defendant is confined shall do both of the*  
36 *following:*

37 (i) *Promptly notify and provide a copy of the report to the*  
38 *defense counsel and the district attorney.*

1     (ii) *Provide a separate notification, in compliance with*  
2     *applicable privacy laws, to the committing county's sheriff that*  
3     *transportation will be needed for the patient.*

4     (2) If the court has issued an order authorizing the treating  
5     facility to involuntarily administer antipsychotic medication to the  
6     defendant, the reports made at six-month intervals concerning the  
7     defendant's progress toward regaining competency shall also  
8     consider the issue of involuntary medication. Each report shall  
9     include, but is not limited to, all the following:

10    (A) Whether or not the defendant has the capacity to make  
11    decisions concerning antipsychotic medication.

12    (B) If the defendant lacks capacity to make decisions concerning  
13    antipsychotic medication, whether the defendant risks serious harm  
14    to his or her physical or mental health if not treated with  
15    antipsychotic medication.

16    (C) Whether or not the defendant presents a danger to others if  
17    he or she is not treated with antipsychotic medication.

18    (D) Whether the defendant has a mental illness for which  
19    medications are the only effective treatment.

20    (E) Whether there are any side effects from the medication  
21    currently being experienced by the defendant that would interfere  
22    with the defendant's ability to collaborate with counsel.

23    (F) Whether there are any effective alternatives to medication.

24    (G) How quickly the medication is likely to bring the defendant  
25    to competency.

26    (H) Whether the treatment plan includes methods other than  
27    medication to restore the defendant to competency.

28    (I) A statement, if applicable, that no medication is likely to  
29    restore the defendant to competency.

30    (3) After reviewing the reports, the court shall determine whether  
31    or not grounds for the order authorizing involuntary administration  
32    of antipsychotic medication still exist and shall do one of the  
33    following:

34    (A) If the original grounds for involuntary medication still exist,  
35    the order authorizing the treating facility to involuntarily administer  
36    antipsychotic medication to the defendant shall remain in effect.

37    (B) If the original grounds for involuntary medication no longer  
38    exist, and there is no other basis for involuntary administration of  
39    antipsychotic medication, the order for the involuntary  
40    administration of antipsychotic medication shall be vacated.

1 (C) If the original grounds for involuntary medication no longer  
2 exist, and the report states that there is another basis for involuntary  
3 administration of antipsychotic medication, the court shall set a  
4 hearing within 21 days to determine whether the order for the  
5 involuntary administration of antipsychotic medication shall be  
6 vacated or whether a new order for the involuntary administration  
7 of antipsychotic medication shall be issued. The hearing shall  
8 proceed as set forth in subparagraph (B) of paragraph (2) of  
9 subdivision (a).

10 (4) Any defendant who has been committed or has been on  
11 outpatient status for 18 months and is still hospitalized or on  
12 outpatient status shall be returned to the committing court where  
13 a hearing shall be held pursuant to the procedures set forth in  
14 Section 1369. The court shall transmit a copy of its order to the  
15 community program director or a designee.

16 (5) If it is determined by the court that no treatment for the  
17 defendant's mental impairment is being conducted, the defendant  
18 shall be returned to the committing court. The court shall transmit  
19 a copy of its order to the community program director or a  
20 designee.

21 (6) At each review by the court specified in this subdivision,  
22 the court shall determine if the security level of housing and  
23 treatment is appropriate and may make an order in accordance  
24 with its determination. If the court determines that the defendant  
25 shall continue to be treated in the state hospital or on an outpatient  
26 basis, the court shall determine issues concerning administration  
27 of antipsychotic medication, as set forth in subparagraph (B) of  
28 paragraph (2) of subdivision (a).

29 (c) (1) At the end of three years from the date of commitment  
30 or a period of commitment equal to the maximum term of  
31 imprisonment provided by law for the most serious offense charged  
32 in the information, indictment, or misdemeanor complaint, *or the*  
33 *maximum term of imprisonment provided by law for a violation*  
34 *of probation or mandatory supervision*, whichever is shorter, *but*  
35 *no later than 90 days prior to the expiration of the defendant's*  
36 *term of commitment*, a defendant who has not recovered mental  
37 competence shall be returned to the committing court. The court  
38 shall notify the community program director or a designee of the  
39 return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee, the sheriff and the district attorney of the county in which criminal charges are pending, and the defendant's counsel of record. The court shall notify the community program director or a designee, the sheriff and district attorney of the county in which criminal charges are pending, and the defendant's counsel of record of the outcome of the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which *the* criminal charges *or revocation proceedings* are pending.

(4) If the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) ~~The~~ *With the exception of proceedings alleging a violation of mandatory supervision, the* criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. *In a proceeding alleging a violation of mandatory supervision, if the person is not placed under a conservatorship as described in paragraph (2) of subdivision (c), or if a conservatorship is terminated, the court*

1 *shall reinstate mandatory supervision and may modify the terms*  
 2 *and conditions of supervision to include appropriate mental health*  
 3 *treatment or refer the matter to a local mental health court, reentry*  
 4 *court, or other collaborative justice court available for improving*  
 5 *the mental health of the defendant.*

6 (e) If the criminal—~~charge~~ *action* against the defendant is  
 7 dismissed, the defendant shall be released from any commitment  
 8 ordered under this section, but without prejudice to the initiation  
 9 of any proceedings that may be appropriate under the  
 10 Lanterman-Petris-Short Act, ~~Part Act~~ *(Part 1* (commencing with  
 11 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~  
 12 *Code).*

13 (f) As used in this chapter, “community program director” means  
 14 the person, agency, or entity designated by the State Department  
 15 of State Hospitals pursuant to Section 1605 of this code and Section  
 16 4360 of the Welfare and Institutions Code.

17 (g) For the purpose of this section, “secure treatment facility”  
 18 shall not include, except for state mental hospitals, state  
 19 developmental centers, and correctional treatment facilities, any  
 20 facility licensed pursuant to Chapter 2 (commencing with Section  
 21 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
 22 3.2 (commencing with Section 1569) of, Division 2 of the Health  
 23 and Safety Code, or any community board and care facility.

24 (h) Nothing in this section shall preclude a defendant from filing  
 25 a petition for habeas corpus to challenge the continuing validity  
 26 of an order authorizing a treatment facility or outpatient program  
 27 to involuntarily administer antipsychotic medication to a person  
 28 being treated as incompetent to stand trial.

29 *SEC. 1.3. Section 1370 of the Penal Code is amended to read:*

30 1370. (a) (1) (A) If the defendant is found mentally  
 31 competent, the criminal process shall resume, the trial on the  
 32 offense charged *or hearing on the alleged violation* shall proceed,  
 33 and judgment may be pronounced.

34 (B) If the defendant is found mentally incompetent, ~~the trial or~~  
 35 *trial, the hearing on the alleged violation, or the judgment* shall  
 36 be suspended until the person becomes mentally competent.

37 (i) In the meantime, the court shall order that the mentally  
 38 incompetent defendant be delivered by the sheriff to a state hospital  
 39 for the care and treatment of the mentally disordered, as directed  
 40 by the State Department of State Hospitals, or to any other available

1 public or private treatment facility, including a local county jail  
2 treatment facility or the community-based residential treatment  
3 system established pursuant to Article 1 (commencing with Section  
4 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and  
5 Institutions Code if the facility has a secured perimeter or a locked  
6 and controlled treatment facility, approved by the community  
7 program director that will promote the defendant's speedy  
8 restoration to mental competence, or placed on outpatient status  
9 as specified in Section 1600.

10 (ii) However, if the action against the defendant who has been  
11 found mentally incompetent is on a complaint charging a felony  
12 offense specified in Section 290, the prosecutor shall determine  
13 whether the defendant previously has been found mentally  
14 incompetent to stand trial pursuant to this chapter on a charge of  
15 a Section 290 offense, or whether the defendant is currently the  
16 subject of a pending Section 1368 proceeding arising out of a  
17 charge of a Section 290 offense. If either determination is made,  
18 the prosecutor shall so notify the court and defendant in writing.  
19 After this notification, and opportunity for hearing, the court shall  
20 order that the defendant be delivered by the sheriff to a state  
21 hospital, as directed by the State Department of State Hospitals,  
22 or other secure treatment facility for the care and treatment of the  
23 mentally disordered unless the court makes specific findings on  
24 the record that an alternative placement would provide more  
25 appropriate treatment for the defendant and would not pose a  
26 danger to the health and safety of others.

27 (iii) If the action against the defendant who has been found  
28 mentally incompetent is on a complaint charging a felony offense  
29 specified in Section 290 and the defendant has been denied bail  
30 pursuant to subdivision (b) of Section 12 of Article I of the  
31 California Constitution because the court has found, based upon  
32 clear and convincing evidence, a substantial likelihood that the  
33 person's release would result in great bodily harm to others, the  
34 court shall order that the defendant be delivered by the sheriff to  
35 a state hospital for the care and treatment of the mentally  
36 disordered, as directed by the State Department of State Hospitals,  
37 unless the court makes specific findings on the record that an  
38 alternative placement would provide more appropriate treatment  
39 for the defendant and would not pose a danger to the health and  
40 safety of others.

1 (iv) The clerk of the court shall notify the Department of Justice  
2 in writing of any finding of mental incompetence with respect to  
3 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
4 or her state summary criminal history information.

5 (C) Upon the filing of a certificate of restoration to competence,  
6 the court shall order that the defendant be returned to court in  
7 accordance with Section 1372. The court shall transmit a copy of  
8 its order to the community program director or a designee.

9 (D) A defendant charged with a violent felony may not be  
10 delivered to a state hospital or treatment facility pursuant to this  
11 subdivision unless the state hospital or treatment facility has a  
12 secured perimeter or a locked and controlled treatment facility,  
13 and the judge determines that the public safety will be protected.

14 (E) For purposes of this paragraph, “violent felony” means an  
15 offense specified in subdivision (c) of Section 667.5.

16 (F) A defendant charged with a violent felony may be placed  
17 on outpatient status, as specified in Section 1600, only if the court  
18 finds that the placement will not pose a danger to the health or  
19 safety of others. If the court places a defendant charged with a  
20 violent felony on outpatient status, as specified in Section 1600,  
21 the court ~~must~~ *shall* serve copies of the placement order on defense  
22 counsel, the sheriff in the county where the defendant will be  
23 ~~placed~~ *placed*, and the district attorney for the county in which the  
24 violent felony charges are pending against the defendant.

25 (2) Prior to making the order directing that the defendant be  
26 committed to the State Department of State Hospitals or other  
27 treatment facility or placed on outpatient status, the court shall  
28 proceed as follows:

29 (A) The court shall order the community program director or a  
30 designee to evaluate the defendant and to submit to the court within  
31 15 judicial days of the order a written recommendation as to  
32 whether the defendant should be required to undergo outpatient  
33 treatment, or *be* committed to the State Department of State  
34 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*  
35 be admitted to a state hospital or other treatment facility or placed  
36 on outpatient status under this section without having been  
37 evaluated by the community program director or a designee. The  
38 community program director or designee shall evaluate the  
39 appropriate placement for the defendant between the State  
40 Department of State Hospitals, a local county jail treatment facility,

1 or the community-based residential treatment system based upon  
2 guidelines provided by the State Department of State Hospitals.  
3 If a local county jail treatment facility is selected, the State  
4 Department of State Hospitals shall provide treatment at the county  
5 jail treatment facility and reimburse the county jail treatment  
6 facility for the reasonable costs of the bed during the treatment. If  
7 the community-based residential treatment system is selected, the  
8 State Department of State Hospitals shall provide reimbursement  
9 to the community-based residential treatment system for the cost  
10 of treatment as negotiated with the State Department of State  
11 Hospitals. The six-month limitation in Section 1369.1 shall not  
12 apply to individuals deemed incompetent to stand trial who are  
13 being treated to restore competency within a county jail treatment  
14 facility pursuant to this section.

15 (B) The court shall hear and determine whether the *defendant*  
16 *lacks capacity to make decisions regarding the administration of*  
17 *antipsychotic medication. The court shall consider opinions in the*  
18 *reports prepared pursuant to subdivision (a) of Section 1369, as*  
19 *applicable to the issue of whether the defendant lacks capacity to*  
20 *make decisions regarding the administration of antipsychotic*  
21 *medication, and shall proceed as follows:*

22 (i) The court shall hear and determine whether any of the  
23 following is true:

24 (I) The defendant lacks capacity to make decisions regarding  
25 antipsychotic medication, the defendant's mental disorder requires  
26 medical treatment with antipsychotic medication, and, if the  
27 defendant's mental disorder is not treated with antipsychotic  
28 medication, it is probable that serious harm to the physical or  
29 mental health of the patient will result. Probability of serious harm  
30 to the physical or mental health of the defendant requires evidence  
31 that the defendant is presently suffering adverse effects to his or  
32 her physical or mental health, or the defendant has previously  
33 suffered these effects as a result of a mental disorder and his or  
34 her condition is substantially deteriorating. The fact that a  
35 defendant has a diagnosis of a mental disorder does not alone  
36 establish probability of serious harm to the physical or mental  
37 health of the defendant.

38 (II) The defendant is a danger to others, in that the defendant  
39 has inflicted, attempted to inflict, or made a serious threat of  
40 inflicting substantial physical harm on another while in custody,



1 or the defendant had inflicted, attempted to inflict, or made a  
2 serious threat of inflicting substantial physical harm on another  
3 that resulted in his or her being taken into custody, and the  
4 defendant presents, as a result of mental disorder or mental defect,  
5 a demonstrated danger of inflicting substantial physical harm on  
6 others. Demonstrated danger may be based on an assessment of  
7 the defendant's present mental condition, including a consideration  
8 of past behavior of the defendant within six years prior to the time  
9 the defendant last attempted to inflict, inflicted, or threatened to  
10 inflict substantial physical harm on another, and other relevant  
11 evidence.

12 (III) The people have charged the defendant with a serious crime  
13 against the person or property, involuntary administration of  
14 antipsychotic medication is substantially likely to render the  
15 defendant competent to stand trial, the medication is unlikely to  
16 have side effects that interfere with the defendant's ability to  
17 understand the nature of the criminal proceedings or to assist  
18 counsel in the conduct of a defense in a reasonable manner, less  
19 intrusive treatments are unlikely to have substantially the same  
20 results, and antipsychotic medication is in the patient's best medical  
21 interest in light of his or her medical condition.

22 (ii) If the court finds any of the conditions described in clause  
23 (i) to be true, the court shall issue an order authorizing ~~the treatment~~  
24 ~~facility to involuntarily administer~~ *involuntary administration of*  
25 antipsychotic medication to the defendant when and as prescribed  
26 by the defendant's treating ~~psychiatrist~~ *psychiatrist at any facility*  
27 *housing the defendant for purposes of this chapter. The order shall*  
28 *be valid for no more than one year, pursuant to subparagraph (A)*  
29 *of paragraph (7).* The court shall not order involuntary  
30 administration of psychotropic medication under subclause (III)  
31 of clause (i) unless the court has first found that the defendant does  
32 not meet the criteria for involuntary administration of psychotropic  
33 medication under subclause (I) of clause (i) and does not meet the  
34 criteria under subclause (II) of clause (i).

35 (iii) In all cases, the treating hospital, facility, or program may  
36 administer medically appropriate antipsychotic medication  
37 prescribed by a psychiatrist in an emergency as described in  
38 subdivision (m) of Section 5008 of the Welfare and Institutions  
39 Code.

(iv) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from his or her counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) Any report made pursuant to paragraph (1) of subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the patients' rights advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph

(B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication based on the conditions described in subclause (I) or (II) of clause (i) of subparagraph (B), the treating psychiatrist shall certify whether the lack of capacity and any applicable conditions described above exist. That certification shall contain an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To ~~be~~<sup>being</sup> ~~be~~ given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

1 (IV) To question persons presenting evidence supporting  
2 involuntary medication.

3 (V) To make reasonable requests for attendance of witnesses  
4 on the defendant's behalf.

5 (VI) To a hearing conducted in an impartial and informal  
6 manner.

7 (ii) If the administrative law judge determines that the defendant  
8 either meets the criteria specified in subclause (I) of clause (i) of  
9 subparagraph (B), or meets the criteria specified in subclause (II)  
10 of clause (i) of subparagraph (B), then antipsychotic medication  
11 may continue to be administered to the defendant for the 21-day  
12 certification period. Concurrently with the treating psychiatrist's  
13 certification, the treating psychiatrist shall file a copy of the  
14 certification and a petition with the court for issuance of an order  
15 to administer antipsychotic medication beyond the 21-day  
16 certification period. For purposes of this subparagraph, the treating  
17 psychiatrist shall not be required to pay or deposit any fee for the  
18 filing of the petition or other document or paper related to the  
19 petition.

20 (iii) If the administrative law judge disagrees with the  
21 certification, medication may not be administered involuntarily  
22 until the court determines that antipsychotic medication should be  
23 administered pursuant to this section.

24 (iv) The court shall provide notice to the prosecuting attorney  
25 and to the attorney representing the defendant, and shall hold a  
26 hearing, no later than 18 days from the date of the certification, to  
27 determine whether antipsychotic medication should be ordered  
28 beyond the certification period.

29 (v) If, as a result of the hearing, the court determines that  
30 antipsychotic medication should be administered beyond the  
31 certification period, the court shall issue an order authorizing the  
32 administration of that medication.

33 (vi) The court shall render its decision on the petition and issue  
34 its order no later than three calendar days after the hearing and, in  
35 any event, no later than the expiration of the 21-day certification  
36 period.

37 (vii) *If the administrative law judge upholds the certification*  
38 *pursuant to clause (ii), the court may, for a period not to exceed*  
39 *14 days, extend the certification and continue the hearing pursuant*  
40 *to stipulation between the parties or upon a finding of good cause.*

1 *In determining good cause, the court may review the petition filed*  
2 *with the court, the administrative law judge's order, and any*  
3 *additional testimony needed by the court to determine if it is*  
4 *appropriate to continue medication beyond the 21-day certification*  
5 *and for a period of up to 14 days.*

6 *(viii) The district attorney, county counsel, or representative of*  
7 *any facility where a defendant found incompetent to stand trial is*  
8 *committed may petition the court for an order to administer*  
9 *involuntary medication pursuant to the criteria set forth in*  
10 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*  
11 *order is reviewable as provided in paragraph (7).*

12 (3) When the court orders that the defendant be committed to  
13 the State Department of State Hospitals or other public or private  
14 treatment facility, the court shall provide copies of the following  
15 documents prior to the admission of the defendant to the State  
16 Department of State Hospitals or other treatment facility where  
17 the defendant is to be committed:

18 (A) The commitment order, including a specification of the  
19 charges.

20 (B) A computation or statement setting forth the maximum term  
21 of commitment in accordance with subdivision (c).

22 (C) A computation or statement setting forth the amount of  
23 credit for time served, if any, to be deducted from the maximum  
24 term of commitment.

25 (D) State summary criminal history information.

26 (E) Any arrest reports prepared by the police department or  
27 other law enforcement agency.

28 (F) Any court-ordered psychiatric examination or evaluation  
29 reports.

30 (G) The community program director's placement  
31 recommendation report.

32 (H) Records of any finding of mental incompetence pursuant  
33 to this chapter arising out of a complaint charging a felony offense  
34 specified in Section 290 or any pending Section 1368 proceeding  
35 arising out of a charge of a Section 290 offense.

36 (I) Any medical records.

37 (4) When the defendant is committed to a treatment facility  
38 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
39 court makes the findings specified in clause (ii) or (iii) of  
40 subparagraph (B) of paragraph (1) to assign the defendant to a

1 treatment facility other than a state hospital or other secure  
2 treatment facility, the court shall order that notice be given to the  
3 appropriate law enforcement agency or agencies having local  
4 jurisdiction at the site of the placement facility of any finding of  
5 mental incompetence pursuant to this chapter arising out of a  
6 charge of a Section 290 offense.

7 (5) When directing that the defendant be confined in a state  
8 hospital pursuant to this subdivision, the court shall commit the  
9 patient to the State Department of State Hospitals.

10 (6) (A) If the defendant is committed or transferred to the State  
11 Department of State Hospitals pursuant to this section, the court  
12 may, upon receiving the written recommendation of the medical  
13 director of the state hospital and the community program director  
14 that the defendant be transferred to a public or private treatment  
15 facility approved by the community program director, order the  
16 defendant transferred to that facility. If the defendant is committed  
17 or transferred to a public or private treatment facility approved by  
18 the community program director, the court may, upon receiving  
19 the written recommendation of the community program director,  
20 transfer the defendant to the State Department of State Hospitals  
21 or to another public or private treatment facility approved by the  
22 community program director. In the event of dismissal of the  
23 criminal charges before the defendant recovers competence, the  
24 person shall be subject to the applicable provisions of the  
25 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
26 5000) of Division 5 of the Welfare and Institutions Code). If either  
27 the defendant or the prosecutor chooses to contest either kind of  
28 order of transfer, a petition may be filed in the court for a hearing,  
29 which shall be held if the court determines that sufficient grounds  
30 exist. At the hearing, the prosecuting attorney or the defendant  
31 may present evidence bearing on the order of transfer. The court  
32 shall use the same standards as are used in conducting probation  
33 revocation hearings pursuant to Section 1203.2.

34 Prior to making an order for transfer under this section, the court  
35 shall notify the defendant, the attorney of record for the defendant,  
36 the prosecuting attorney, and the community program director or  
37 a designee.

38 (B) If the defendant is initially committed to the State  
39 Department of State Hospitals or secure treatment facility pursuant  
40 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is

1 subsequently transferred to any other facility, copies of the  
2 documents specified in paragraph (3) shall be taken with the  
3 defendant to each subsequent facility to which the defendant is  
4 transferred. The transferring facility shall also notify the appropriate  
5 law enforcement agency or agencies having local jurisdiction at  
6 the site of the new facility that the defendant is a person subject  
7 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

8 (7) (A) An order by the court authorizing involuntary  
9 medication of the defendant shall be valid for no more than one  
10 year. The court shall review the order ~~six months after the order~~  
11 ~~was made at the time of the review of the initial report and the~~  
12 ~~six-month progress reports pursuant to paragraph (1) of~~  
13 ~~subdivision (b) to determine if the grounds for the authorization~~  
14 remain. In the review, the court shall consider the reports of the  
15 treating psychiatrist or psychiatrists and the defendant's patients'  
16 rights advocate or attorney. The court may require testimony from  
17 the treating psychiatrist or psychiatrists and the patients' rights  
18 advocate or attorney, if necessary. The court may continue the  
19 order authorizing involuntary medication for up to another six  
20 months, or vacate the order, or make any other appropriate order.

21 (B) *Within 60 days before the expiration of the one-year*  
22 *involuntary medication order, the district attorney, county counsel,*  
23 *or representative of any facility where a defendant found*  
24 *incompetent to stand trial is committed may petition the committing*  
25 *court for a renewal, subject to the same conditions and*  
26 *requirements as in subparagraph (A). The petition shall include*  
27 *the basis for involuntary medication set forth in clause (i) of*  
28 *subparagraph (B) of paragraph (2). Notice of the petition shall*  
29 *be provided to the defendant, the defendant's attorney, and the*  
30 *district attorney. The court shall hear and determine whether the*  
31 *defendant continues to meet the criteria set forth in clause (i) of*  
32 *subparagraph (B) of paragraph (2). The hearing on any petition*  
33 *to renew an order for involuntary medication shall be conducted*  
34 *prior to the expiration of the current order.*

35 (b) (1) Within 90 days of a commitment made pursuant to  
36 subdivision (a), the medical director of the state hospital or other  
37 treatment facility to which the defendant is confined shall make a  
38 written report to the court and the community program director  
39 for the county or region of commitment, or a designee, concerning  
40 the defendant's progress toward recovery of mental ~~competence~~.

1 *competence and whether the administration of antipsychotic*  
2 *medication remains necessary.* If the defendant is on outpatient  
3 status, the outpatient treatment staff shall make a written report to  
4 the community program director concerning the defendant's  
5 progress toward recovery of mental competence. Within 90 days  
6 of placement on outpatient status, the community program director  
7 shall report to the court on this matter. If the defendant has not  
8 recovered mental competence, but the report discloses a substantial  
9 likelihood that the defendant will regain mental competence in the  
10 foreseeable future, the defendant shall remain in the state hospital  
11 or other treatment facility or on outpatient status. Thereafter, at  
12 six-month intervals or until the defendant becomes mentally  
13 competent, if the defendant is confined in a treatment facility, the  
14 medical director of the hospital or person in charge of the facility  
15 shall report in writing to the court and the community program  
16 director or a designee regarding the defendant's progress toward  
17 recovery of mental ~~competence~~. *competence and whether the*  
18 *administration of antipsychotic medication remains necessary.* If  
19 the defendant is on outpatient status, after the initial 90-day report,  
20 the outpatient treatment staff shall report to the community program  
21 director on the defendant's progress toward recovery, and the  
22 community program director shall report to the court on this matter  
23 at six-month intervals. A copy of these reports shall be provided  
24 to the prosecutor and defense counsel by the court. ~~If~~

25 (A) *If the report indicates that there is no substantial likelihood*  
26 *that the defendant will regain mental competence in the foreseeable*  
27 *future, the committing court shall order the defendant to be returned*  
28 *to the court for proceedings pursuant to paragraph (2) of*  
29 *subdivision (e). (c) no later than 10 days following receipt of the*  
30 *report.* The court shall transmit a copy of its order to the  
31 community program director or a designee.

32 (B) *If the report indicates that there is no substantial likelihood*  
33 *that the defendant will regain mental competence in the foreseeable*  
34 *future, the medical director of the state hospital or other treatment*  
35 *facility to which the defendant is confined shall do both of the*  
36 *following:*

37 (i) *Promptly notify and provide a copy of the report to the*  
38 *defense counsel and the district attorney.*



1   (ii) *Provide a separate notification, in compliance with*  
2 *applicable privacy laws, to the committing county's sheriff that*  
3 *transportation will be needed for the patient.*

4   (2) If the court has issued an order authorizing the treating  
5 facility to involuntarily administer antipsychotic medication to the  
6 defendant, the reports made ~~at six-month intervals~~ pursuant to  
7 paragraph (1) concerning the defendant's progress toward  
8 regaining competency shall also consider the issue of involuntary  
9 medication. Each report shall include, but is not limited to, all the  
10 following:

11   (A) Whether or not the defendant has the capacity to make  
12 decisions concerning antipsychotic medication.

13   (B) If the defendant lacks capacity to make decisions concerning  
14 antipsychotic medication, whether the defendant risks serious harm  
15 to his or her physical or mental health if not treated with  
16 antipsychotic medication.

17   (C) Whether or not the defendant presents a danger to others if  
18 he or she is not treated with antipsychotic medication.

19   (D) Whether the defendant has a mental illness for which  
20 medications are the only effective treatment.

21   (E) Whether there are any side effects from the medication  
22 currently being experienced by the defendant that would interfere  
23 with the defendant's ability to collaborate with counsel.

24   (F) Whether there are any effective alternatives to medication.

25   (G) How quickly the medication is likely to bring the defendant  
26 to competency.

27   (H) Whether the treatment plan includes methods other than  
28 medication to restore the defendant to competency.

29   (I) A statement, if applicable, that no medication is likely to  
30 restore the defendant to competency.

31   (3) After reviewing the reports, the court shall determine whether  
32 or not grounds for the order authorizing involuntary administration  
33 of antipsychotic medication still exist and shall do one of the  
34 following:

35   (A) If the original grounds for involuntary medication still exist,  
36 the order authorizing the treating facility to involuntarily administer  
37 antipsychotic medication to the defendant shall remain in effect.

38   (B) If the original grounds for involuntary medication no longer  
39 exist, and there is no other basis for involuntary administration of

1 antipsychotic medication, the order for the involuntary  
2 administration of antipsychotic medication shall be vacated.

3 (C) If the original grounds for involuntary medication no longer  
4 exist, and the report states that there is another basis for involuntary  
5 administration of antipsychotic medication, the court shall set a  
6 hearing within 21 days to determine whether the order for the  
7 involuntary administration of antipsychotic medication shall be  
8 vacated or whether a new order for the involuntary administration  
9 of antipsychotic medication shall be issued. The hearing shall  
10 proceed as set forth in subparagraph (B) of paragraph (2) of  
11 subdivision (a).

12 (4) Any defendant who has been committed or has been on  
13 outpatient status for 18 months and is still hospitalized or on  
14 outpatient status shall be returned to the committing court where  
15 a hearing shall be held pursuant to the procedures set forth in  
16 Section 1369. The court shall transmit a copy of its order to the  
17 community program director or a designee.

18 (5) If it is determined by the court that no treatment for the  
19 defendant's mental impairment is being conducted, the defendant  
20 shall be returned to the committing court. The court shall transmit  
21 a copy of its order to the community program director or a  
22 designee.

23 (6) At each review by the court specified in this subdivision,  
24 the court shall determine if the security level of housing and  
25 treatment is appropriate and may make an order in accordance  
26 with its determination. If the court determines that the defendant  
27 shall continue to be treated in the state hospital or on an outpatient  
28 basis, the court shall determine issues concerning administration  
29 of antipsychotic medication, as set forth in subparagraph (B) of  
30 paragraph (2) of subdivision (a).

31 (c) (1) At the end of three years from the date of commitment  
32 or a period of commitment equal to the maximum term of  
33 imprisonment provided by law for the most serious offense charged  
34 in the information, indictment, or misdemeanor complaint, *or the*  
35 *maximum term of imprisonment provided by law for a violation*  
36 *of probation or mandatory supervision*, whichever is shorter, *but*  
37 *no later than 90 days prior to the expiration of the defendant's*  
38 *term of commitment*, a defendant who has not recovered mental  
39 competence shall be returned to the committing court. The court

1 shall notify the community program director or a designee of the  
2 return and of any resulting court orders.

3 (2) Whenever any defendant is returned to the court pursuant  
4 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this  
5 subdivision and it appears to the court that the defendant is gravely  
6 disabled, as defined in subparagraph (B) of paragraph (1) of  
7 subdivision (h) of Section 5008 of the Welfare and Institutions  
8 Code, the court shall order the conservatorship investigator of the  
9 county of commitment of the defendant to initiate conservatorship  
10 proceedings for the defendant pursuant to Chapter 3 (commencing  
11 with Section 5350) of Part 1 of Division 5 of the Welfare and  
12 Institutions Code. Any hearings required in the conservatorship  
13 proceedings shall be held in the superior court in the county that  
14 ordered the commitment. The court shall transmit a copy of the  
15 order directing initiation of conservatorship proceedings to the  
16 community program director or a designee, the sheriff and the  
17 district attorney of the county in which criminal charges are  
18 pending, and the defendant's counsel of record. The court shall  
19 notify the community program director or a designee, the sheriff  
20 and district attorney of the county in which criminal charges are  
21 pending, and the defendant's counsel of record of the outcome of  
22 the conservatorship proceedings.

23 (3) If a change in placement is proposed for a defendant who  
24 is committed pursuant to subparagraph (B) of paragraph (1) of  
25 subdivision (h) of Section 5008 of the Welfare and Institutions  
26 Code, the court shall provide notice and an opportunity to be heard  
27 with respect to the proposed placement of the defendant to the  
28 sheriff and the district attorney of the county in which *the* criminal  
29 charges *or revocation proceedings* are pending.

30 (4) If the defendant is confined in a treatment facility, a copy  
31 of any report to the committing court regarding the defendant's  
32 progress toward recovery of mental competence shall be provided  
33 by the committing court to the prosecutor and to the defense  
34 counsel.

35 (d) ~~The~~ *With the exception of proceedings alleging a violation*  
36 *of mandatory supervision, the* criminal action remains subject to  
37 dismissal pursuant to Section 1385. If the criminal action is  
38 dismissed, the court shall transmit a copy of the order of dismissal  
39 to the community program director or a designee. *In a proceeding*  
40 *alleging a violation of mandatory supervision, if the person is not*

1 placed under a conservatorship as described in paragraph (2) of  
2 subdivision (c), or if a conservatorship is terminated, the court  
3 shall reinstate mandatory supervision and may modify the terms  
4 and conditions of supervision to include appropriate mental health  
5 treatment or refer the matter to a local mental health court, reentry  
6 court, or other collaborative justice court available for improving  
7 the mental health of the defendant.

8 (e) If the criminal~~-charge~~ action against the defendant is  
9 dismissed, the defendant shall be released from any commitment  
10 ordered under this section, but without prejudice to the initiation  
11 of any proceedings that may be appropriate under the  
12 Lanterman-Petris-Short Act, ~~Part Act~~ (Part 1 (commencing with  
13 Section 5000) of Division 5 of the Welfare and Institutions Code  
14 Code).

15 (f) As used in this chapter, “community program director” means  
16 the person, agency, or entity designated by the State Department  
17 of State Hospitals pursuant to Section 1605 of this code and Section  
18 4360 of the Welfare and Institutions Code.

19 (g) For the purpose of this section, “secure treatment facility”  
20 shall not include, except for state mental hospitals, state  
21 developmental centers, and correctional treatment facilities, any  
22 facility licensed pursuant to Chapter 2 (commencing with Section  
23 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter  
24 3.2 (commencing with Section 1569) of, Division 2 of the Health  
25 and Safety Code, or any community board and care facility.

26 (h) Nothing in this section shall preclude a defendant from filing  
27 a petition for habeas corpus to challenge the continuing validity  
28 of an order authorizing a treatment facility or outpatient program  
29 to involuntarily administer antipsychotic medication to a person  
30 being treated as incompetent to stand trial.

31 SEC. 2. (a) Section 1.1 of this bill incorporates amendments  
32 to Section 1370 of the Penal Code proposed by both this bill and  
33 Assembly Bill 2186. It shall only become operative if (1) both bills  
34 are enacted and become effective on or before January 1, 2015,  
35 (2) each bill amends Section 1370 of the Penal Code, (3) Senate  
36 Bill 1412 is not enacted or as enacted does not amend that section,  
37 and (4) this bill is enacted after Assembly Bill 2186, in which case  
38 Sections 1, 1.2, and 1.3 of this bill shall not become operative.

39 (b) Section 1.2 of this bill incorporates amendments to Section  
40 1370 of the Penal Code proposed by both this bill and Senate Bill

1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, (2) each bill amends Section 1370 of the Penal Code, (3) Assembly Bill 2186 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 1412 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 1370 of the Penal Code proposed by this bill, Assembly Bill 2186, and Senate Bill 1412. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2015, (2) all three bills amend Section 1370 of the Penal Code, and (3) this bill is enacted after Assembly Bill 2186 and Senate Bill 1412, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

~~SECTION 1. Section 1370 of the Penal Code is amended to read:~~

~~1370.—(a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.~~

~~(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.~~

~~(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility, including a local county jail treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.~~

~~(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall~~

1 order that the defendant be delivered by the sheriff to a state  
2 hospital or other secure treatment facility for the care and treatment  
3 of the mentally disordered unless the court makes specific findings  
4 on the record that an alternative placement would provide more  
5 appropriate treatment for the defendant and would not pose a  
6 danger to the health and safety of others.

7 (iii) If the action against the defendant who has been found  
8 mentally incompetent is on a complaint charging a felony offense  
9 specified in Section 290 and the defendant has been denied bail  
10 pursuant to subdivision (b) of Section 12 of Article I of the  
11 California Constitution because the court has found, based upon  
12 clear and convincing evidence, a substantial likelihood that the  
13 person's release would result in great bodily harm to others, the  
14 court shall order that the defendant be delivered by the sheriff to  
15 a state hospital for the care and treatment of the mentally disordered  
16 unless the court makes specific findings on the record that an  
17 alternative placement would provide more appropriate treatment  
18 for the defendant and would not pose a danger to the health and  
19 safety of others.

20 (iv) The clerk of the court shall notify the Department of Justice  
21 in writing of any finding of mental incompetence with respect to  
22 a defendant who is subject to clause (ii) or (iii) for inclusion in his  
23 or her state summary criminal history information.

24 (C) Upon the filing of a certificate of restoration to competence,  
25 the court shall order that the defendant be returned to court in  
26 accordance with Section 1372. The court shall transmit a copy of  
27 its order to the community program director or a designee.

28 (D) A defendant charged with a violent felony may not be  
29 delivered to a state hospital or treatment facility pursuant to this  
30 subdivision unless the state hospital or treatment facility has a  
31 secured perimeter or a locked and controlled treatment facility,  
32 and the judge determines that the public safety will be protected.

33 (E) For purposes of this paragraph, "violent felony" means an  
34 offense specified in subdivision (c) of Section 667.5.

35 (F) A defendant charged with a violent felony may be placed  
36 on outpatient status, as specified in Section 1600, only if the court  
37 finds that the placement will not pose a danger to the health or  
38 safety of others. If the court places a defendant charged with a  
39 violent felony on outpatient status, as specified in Section 1600,  
40 the court must serve copies of the placement order on defense

1 counsel, the sheriff in the county where the defendant will be  
2 placed and the district attorney for the county in which the violent  
3 felony charges are pending against the defendant.

4 (2) Prior to making the order directing that the defendant be  
5 confined in a state hospital or other treatment facility or placed on  
6 outpatient status, the court shall proceed as follows:

7 (A) The court shall order the community program director or a  
8 designee to evaluate the defendant and to submit to the court within  
9 15 judicial days of the order a written recommendation as to  
10 whether the defendant should be required to undergo outpatient  
11 treatment, or committed to a state hospital or to any other treatment  
12 facility. No person shall be admitted to a state hospital or other  
13 treatment facility or placed on outpatient status under this section  
14 without having been evaluated by the community program director  
15 or a designee. The community program director or designee shall  
16 evaluate the appropriate placement for the defendant between a  
17 state hospital or a local county jail treatment facility based upon  
18 guidelines provided by the State Department of State Hospitals.  
19 If a local county jail treatment facility is selected, the State  
20 Department of State Hospitals shall provide treatment at the county  
21 jail treatment facility and reimburse the county jail treatment  
22 facility for the reasonable costs of the bed during the treatment.  
23 The six-month limitation in Section 1369.1 shall not apply to  
24 individuals deemed incompetent to stand trial who are being treated  
25 to restore competency within a county jail treatment facility  
26 pursuant to this section.

27 (B) The court shall hear and determine whether the defendant  
28 lacks capacity to make decisions regarding the administration of  
29 antipsychotic medication, and shall proceed as follows:

30 (i) The court shall hear and determine whether any of the  
31 following is true:

32 (I) The defendant lacks capacity to make decisions regarding  
33 antipsychotic medication, the defendant's mental disorder requires  
34 medical treatment with antipsychotic medication, and, if the  
35 defendant's mental disorder is not treated with antipsychotic  
36 medication, it is probable that serious harm to the physical or  
37 mental health of the patient will result. Probability of serious harm  
38 to the physical or mental health of the defendant requires evidence  
39 that the defendant is presently suffering adverse effects to his or  
40 her physical or mental health, or the defendant has previously

1 suffered these effects as a result of a mental disorder and his or  
2 her condition is substantially deteriorating. The fact that a  
3 defendant has a diagnosis of a mental disorder does not alone  
4 establish probability of serious harm to the physical or mental  
5 health of the defendant.

6 (II) The defendant is a danger to others, in that the defendant  
7 has inflicted, attempted to inflict, or made a serious threat of  
8 inflicting substantial physical harm on another while in custody;  
9 or the defendant had inflicted, attempted to inflict, or made a  
10 serious threat of inflicting substantial physical harm on another  
11 that resulted in his or her being taken into custody, and the  
12 defendant presents, as a result of mental disorder or mental defect,  
13 a demonstrated danger of inflicting substantial physical harm on  
14 others. Demonstrated danger may be based on an assessment of  
15 the defendant's present mental condition, including a consideration  
16 of past behavior of the defendant within six years prior to the time  
17 the defendant last attempted to inflict, inflicted, or threatened to  
18 inflict substantial physical harm on another, and other relevant  
19 evidence.

20 (III) The people have charged the defendant with a serious crime  
21 against the person or property, involuntary administration of  
22 antipsychotic medication is substantially likely to render the  
23 defendant competent to stand trial, the medication is unlikely to  
24 have side effects that interfere with the defendant's ability to  
25 understand the nature of the criminal proceedings or to assist  
26 counsel in the conduct of a defense in a reasonable manner, less  
27 intrusive treatments are unlikely to have substantially the same  
28 results, and antipsychotic medication is in the patient's best medical  
29 interest in light of his or her medical condition.

30 (ii) If the court finds any of the conditions described in clause  
31 (i) to be true, the court shall issue an order authorizing the treatment  
32 facility to involuntarily administer antipsychotic medication to the  
33 defendant when and as prescribed by the defendant's treating  
34 psychiatrist. The court shall not order involuntary administration  
35 of psychotropic medication under subclause (III) of clause (i)  
36 unless the court has first found that the defendant does not meet  
37 the criteria for involuntary administration of psychotropic  
38 medication under subclause (I) of clause (i) and does not meet the  
39 criteria under subclause (II) of clause (i).



1 (iii) In all cases, the treating hospital, facility, or program may  
2 administer medically appropriate antipsychotic medication  
3 prescribed by a psychiatrist in an emergency as described in  
4 subdivision (m) of Section 5008 of the Welfare and Institutions  
5 Code.

6 (iv) If the court has determined that the defendant has the  
7 capacity to make decisions regarding antipsychotic medication,  
8 and if the defendant, with advice of his or her counsel, consents,  
9 the court order of commitment shall include confirmation that  
10 antipsychotic medication may be given to the defendant as  
11 prescribed by a treating psychiatrist pursuant to the defendant's  
12 consent. The commitment order shall also indicate that, if the  
13 defendant withdraws consent for antipsychotic medication, after  
14 the treating psychiatrist complies with the provisions of  
15 subparagraph (C), the defendant shall be returned to court for a  
16 hearing in accordance with subparagraphs (C) and (D) regarding  
17 whether antipsychotic medication shall be administered  
18 involuntarily.

19 (v) If the court has determined that the defendant has the  
20 capacity to make decisions regarding antipsychotic medication  
21 and if the defendant, with advice from his or her counsel, does not  
22 consent, the court order for commitment shall indicate that, after  
23 the treating psychiatrist complies with the provisions of  
24 subparagraph (C), the defendant shall be returned to court for a  
25 hearing in accordance with subparagraphs (C) and (D) regarding  
26 whether antipsychotic medication shall be administered  
27 involuntarily.

28 (vi) Any report made pursuant to paragraph (1) of subdivision  
29 (b) shall include a description of any antipsychotic medication  
30 administered to the defendant and its effects and side effects,  
31 including effects on the defendant's appearance or behavior that  
32 would affect the defendant's ability to understand the nature of  
33 the criminal proceedings or to assist counsel in the conduct of a  
34 defense in a reasonable manner. During the time the defendant is  
35 confined in a state hospital or other treatment facility or placed on  
36 outpatient status, either the defendant or the people may request  
37 that the court review any order made pursuant to this subdivision.  
38 The defendant, to the same extent enjoyed by other patients in the  
39 state hospital or other treatment facility, shall have the right to

1 contact the patients' rights advocate regarding his or her rights  
2 under this section.

3 ~~(C) If the defendant consented to antipsychotic medication as~~  
4 ~~described in clause (iv) of subparagraph (B), but subsequently~~  
5 ~~withdraws his or her consent, or, if involuntary antipsychotic~~  
6 ~~medication was not ordered pursuant to clause (v) of subparagraph~~  
7 ~~(B), and the treating psychiatrist determines that antipsychotic~~  
8 ~~medication has become medically necessary and appropriate, the~~  
9 ~~treating psychiatrist shall make efforts to obtain informed consent~~  
10 ~~from the defendant for antipsychotic medication. If informed~~  
11 ~~consent is not obtained from the defendant, and the treating~~  
12 ~~psychiatrist is of the opinion that the defendant lacks capacity to~~  
13 ~~make decisions regarding antipsychotic medication based on the~~  
14 ~~conditions described in subclause (I) or (II) of clause (i) of~~  
15 ~~subparagraph (B), the treating psychiatrist shall certify whether~~  
16 ~~the lack of capacity and any applicable conditions described above~~  
17 ~~exist. That certification shall contain an assessment of the current~~  
18 ~~mental status of the defendant and the opinion of the treating~~  
19 ~~psychiatrist that involuntary antipsychotic medication has become~~  
20 ~~medically necessary and appropriate.~~

21 ~~(D) (i) If the treating psychiatrist certifies that antipsychotic~~  
22 ~~medication has become medically necessary and appropriate~~  
23 ~~pursuant to subparagraph (C), antipsychotic medication may be~~  
24 ~~administered to the defendant for not more than 21 days, provided,~~  
25 ~~however, that, within 72 hours of the certification, the defendant~~  
26 ~~is provided a medication review hearing before an administrative~~  
27 ~~law judge to be conducted at the facility where the defendant is~~  
28 ~~receiving treatment. The treating psychiatrist shall present the case~~  
29 ~~for the certification for involuntary treatment and the defendant~~  
30 ~~shall be represented by an attorney or a patients' rights advocate.~~  
31 ~~The attorney or patients' rights advocate shall be appointed to meet~~  
32 ~~with the defendant no later than one day prior to the medication~~  
33 ~~review hearing to review the defendant's rights at the medication~~  
34 ~~review hearing, discuss the process, answer questions or concerns~~  
35 ~~regarding involuntary medication or the hearing, assist the~~  
36 ~~defendant in preparing for the hearing and advocating for his or~~  
37 ~~her interests at the hearing, review the panel's final determination~~  
38 ~~following the hearing, advise the defendant of his or her right to~~  
39 ~~judicial review of the panel's decision, and provide the defendant~~  
40 ~~with referral information for legal advice on the subject. The~~

1 defendant shall also have the following rights with respect to the  
2 medication review hearing:

3 (I) To being given timely access to the defendant's records.

4 (II) To be present at the hearing, unless the defendant waives  
5 that right.

6 (III) To present evidence at the hearing.

7 (IV) To question persons presenting evidence supporting  
8 involuntary medication.

9 (V) To make reasonable requests for attendance of witnesses  
10 on the defendant's behalf.

11 (VI) To a hearing conducted in an impartial and informal  
12 manner.

13 (ii) If the administrative law judge determines that the defendant  
14 either meets the criteria specified in subclause (I) of clause (i) of  
15 subparagraph (B), or meets the criteria specified in subclause (II)  
16 of clause (i) of subparagraph (B), then antipsychotic medication  
17 may continue to be administered to the defendant for the 21-day  
18 certification period. Concurrently with the treating psychiatrist's  
19 certification, the treating psychiatrist shall file a copy of the  
20 certification and a petition with the court for issuance of an order  
21 to administer antipsychotic medication beyond the 21-day  
22 certification period. For purposes of this subparagraph, the treating  
23 psychiatrist shall not be required to pay or deposit any fee for the  
24 filing of the petition or other document or paper related to the  
25 petition.

26 (iii) If the administrative law judge disagrees with the  
27 certification, medication may not be administered involuntarily  
28 until the court determines that antipsychotic medication should be  
29 administered pursuant to this section.

30 (iv) The court shall provide notice to the prosecuting attorney  
31 and to the attorney representing the defendant, and shall hold a  
32 hearing, no later than 18 days from the date of the certification, to  
33 determine whether antipsychotic medication should be ordered  
34 beyond the certification period.

35 (v) If, as a result of the hearing, the court determines that  
36 antipsychotic medication should be administered beyond the  
37 certification period, the court shall issue an order authorizing the  
38 administration of that medication.

39 (vi) The court shall render its decision on the petition and issue  
40 its order no later than three calendar days after the hearing and, in

1 any event, no later than the expiration of the 21-day certification  
2 period.

3 ~~(3) When the court orders that the defendant be confined in a~~  
4 ~~state hospital or other public or private treatment facility, the court~~  
5 ~~shall provide copies of the following documents which shall be~~  
6 ~~taken with the defendant to the state hospital or other treatment~~  
7 ~~facility where the defendant is to be confined:~~

8 ~~(A) The commitment order, including a specification of the~~  
9 ~~charges.~~

10 ~~(B) A computation or statement setting forth the maximum term~~  
11 ~~of commitment in accordance with subdivision (e).~~

12 ~~(C) A computation or statement setting forth the amount of~~  
13 ~~credit for time served, if any, to be deducted from the maximum~~  
14 ~~term of commitment.~~

15 ~~(D) State summary criminal history information.~~

16 ~~(E) Any arrest reports prepared by the police department or~~  
17 ~~other law enforcement agency.~~

18 ~~(F) Any court-ordered psychiatric examination or evaluation~~  
19 ~~reports.~~

20 ~~(G) The community program director's placement~~  
21 ~~recommendation report.~~

22 ~~(H) Records of any finding of mental incompetence pursuant~~  
23 ~~to this chapter arising out of a complaint charging a felony offense~~  
24 ~~specified in Section 290 or any pending Section 1368 proceeding~~  
25 ~~arising out of a charge of a Section 290 offense.~~

26 ~~(4) When the defendant is committed to a treatment facility~~  
27 ~~pursuant to clause (i) of subparagraph (B) of paragraph (1) or the~~  
28 ~~court makes the findings specified in clause (ii) or (iii) of~~  
29 ~~subparagraph (B) of paragraph (1) to assign the defendant to a~~  
30 ~~treatment facility other than a state hospital or other secure~~  
31 ~~treatment facility, the court shall order that notice be given to the~~  
32 ~~appropriate law enforcement agency or agencies having local~~  
33 ~~jurisdiction at the site of the placement facility of any finding of~~  
34 ~~mental incompetence pursuant to this chapter arising out of a~~  
35 ~~charge of a Section 290 offense.~~

36 ~~(5) When directing that the defendant be confined in a state~~  
37 ~~hospital pursuant to this subdivision, the court shall select the~~  
38 ~~hospital in accordance with the policies established by the State~~  
39 ~~Department of State Hospitals.~~

1     ~~(6) (A) If the defendant is committed or transferred to a state~~  
2 ~~hospital pursuant to this section, the court may, upon receiving the~~  
3 ~~written recommendation of the medical director of the state hospital~~  
4 ~~and the community program director that the defendant be~~  
5 ~~transferred to a public or private treatment facility approved by~~  
6 ~~the community program director, order the defendant transferred~~  
7 ~~to that facility. If the defendant is committed or transferred to a~~  
8 ~~public or private treatment facility approved by the community~~  
9 ~~program director, the court may, upon receiving the written~~  
10 ~~recommendation of the community program director, transfer the~~  
11 ~~defendant to a state hospital or to another public or private~~  
12 ~~treatment facility approved by the community program director.~~  
13 ~~In the event of dismissal of the criminal charges before the~~  
14 ~~defendant recovers competence, the person shall be subject to the~~  
15 ~~applicable provisions of the Lanterman-Petris-Short Act (Part 1~~  
16 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~  
17 ~~Institutions Code). Where either the defendant or the prosecutor~~  
18 ~~chooses to contest either kind of order of transfer, a petition may~~  
19 ~~be filed in the court for a hearing, which shall be held if the court~~  
20 ~~determines that sufficient grounds exist. At the hearing, the~~  
21 ~~prosecuting attorney or the defendant may present evidence bearing~~  
22 ~~on the order of transfer. The court shall use the same standards as~~  
23 ~~are used in conducting probation revocation hearings pursuant to~~  
24 ~~Section 1203.2.~~

25     ~~Prior to making an order for transfer under this section, the court~~  
26 ~~shall notify the defendant, the attorney of record for the defendant,~~  
27 ~~the prosecuting attorney, and the community program director or~~  
28 ~~a designee.~~

29     ~~(B) If the defendant is initially committed to a state hospital or~~  
30 ~~secure treatment facility pursuant to clause (ii) or (iii) of~~  
31 ~~subparagraph (B) of paragraph (1) and is subsequently transferred~~  
32 ~~to any other facility, copies of the documents specified in paragraph~~  
33 ~~(3) shall be taken with the defendant to each subsequent facility~~  
34 ~~to which the defendant is transferred. The transferring facility shall~~  
35 ~~also notify the appropriate law enforcement agency or agencies~~  
36 ~~having local jurisdiction at the site of the new facility that the~~  
37 ~~defendant is a person subject to clause (ii) or (iii) of subparagraph~~  
38 ~~(B) of paragraph (1).~~

39     ~~(7) An order by the court authorizing involuntary medication~~  
40 ~~of the defendant shall be valid for no more than one year. The~~

1 court shall review the order six months after the order was made  
2 to determine if the grounds for the authorization remain. In the  
3 review, the court shall consider the reports of the treating  
4 psychiatrist or psychiatrists and the defendant's patients' rights  
5 advocate or attorney. The court may require testimony from the  
6 treating psychiatrist or psychiatrists and the patients' rights  
7 advocate or attorney, if necessary. The court may continue the  
8 order authorizing involuntary medication for up to another six  
9 months, or vacate the order, or make any other appropriate order.

10 (b) (1) Within 90 days of a commitment made pursuant to  
11 subdivision (a), the medical director of the state hospital or other  
12 treatment facility to which the defendant is confined shall make a  
13 written report to the court and the community program director  
14 for the county or region of commitment, or a designee, concerning  
15 the defendant's progress toward recovery of mental competence.  
16 Where the defendant is on outpatient status, the outpatient treatment  
17 staff shall make a written report to the community program director  
18 concerning the defendant's progress toward recovery of mental  
19 competence. Within 90 days of placement on outpatient status, the  
20 community program director shall report to the court on this matter.  
21 If the defendant has not recovered mental competence, but the  
22 report discloses a substantial likelihood that the defendant will  
23 regain mental competence in the foreseeable future, the defendant  
24 shall remain in the state hospital or other treatment facility or on  
25 outpatient status. Thereafter, at six-month intervals or until the  
26 defendant becomes mentally competent, where the defendant is  
27 confined in a treatment facility, the medical director of the hospital  
28 or person in charge of the facility shall report in writing to the  
29 court and the community program director or a designee regarding  
30 the defendant's progress toward recovery of mental competence.  
31 Where the defendant is on outpatient status, after the initial 90-day  
32 report, the outpatient treatment staff shall report to the community  
33 program director on the defendant's progress toward recovery;  
34 and the community program director shall report to the court on  
35 this matter at six-month intervals. A copy of these reports shall be  
36 provided to the prosecutor and defense counsel by the court.

37 (A) If the report indicates that there is no substantial likelihood  
38 that the defendant will regain mental competence in the foreseeable  
39 future, the committing court shall order the defendant to be returned  
40 to the court for proceedings pursuant to paragraph (2) of

1 subdivision (c) no later than 10 days following receipt of the report.  
2 The court shall transmit a copy of its order to the community  
3 program director or a designee.

4 (B) If the report indicates that there is no substantial likelihood  
5 that the defendant will regain mental competence in the foreseeable  
6 future, the medical director of the state hospital or other treatment  
7 facility to which the defendant is confined shall do both of the  
8 following:

9 (i) Promptly notify and provide a copy of the report to the  
10 defense counsel and the district attorney.

11 (ii) Provide a separate notification, in compliance with  
12 applicable privacy laws, to the committing county's sheriff that  
13 transportation will be needed for the patient.

14 (2) Where the court has issued an order authorizing the treating  
15 facility to involuntarily administer antipsychotic medication to the  
16 defendant, the reports made at six-month intervals concerning the  
17 defendant's progress toward regaining competency shall also  
18 consider the issue of involuntary medication. Each report shall  
19 include, but is not limited to, all the following:

20 (A) Whether or not the defendant has the capacity to make  
21 decisions concerning antipsychotic medication.

22 (B) If the defendant lacks capacity to make decisions concerning  
23 antipsychotic medication, whether the defendant risks serious harm  
24 to his or her physical or mental health if not treated with  
25 antipsychotic medication.

26 (C) Whether or not the defendant presents a danger to others if  
27 he or she is not treated with antipsychotic medication.

28 (D) Whether the defendant has a mental illness for which  
29 medications are the only effective treatment.

30 (E) Whether there are any side effects from the medication  
31 currently being experienced by the defendant that would interfere  
32 with the defendant's ability to collaborate with counsel.

33 (F) Whether there are any effective alternatives to medication.

34 (G) How quickly the medication is likely to bring the defendant  
35 to competency.

36 (H) Whether the treatment plan includes methods other than  
37 medication to restore the defendant to competency.

38 (I) A statement, if applicable, that no medication is likely to  
39 restore the defendant to competency.

1     ~~(3) After reviewing the reports, the court shall determine whether~~  
2     ~~or not grounds for the order authorizing involuntary administration~~  
3     ~~of antipsychotic medication still exist and shall do one of the~~  
4     ~~following:~~

5     ~~(A) If the original grounds for involuntary medication still exist,~~  
6     ~~the order authorizing the treating facility to involuntarily administer~~  
7     ~~antipsychotic medication to the defendant shall remain in effect.~~

8     ~~(B) If the original grounds for involuntary medication no longer~~  
9     ~~exist, and there is no other basis for involuntary administration of~~  
10    ~~antipsychotic medication, the order for the involuntary~~  
11    ~~administration of antipsychotic medication shall be vacated.~~

12    ~~(C) If the original grounds for involuntary medication no longer~~  
13    ~~exist, and the report states that there is another basis for involuntary~~  
14    ~~administration of antipsychotic medication, the court shall set a~~  
15    ~~hearing within 21 days to determine whether the order for the~~  
16    ~~involuntary administration of antipsychotic medication shall be~~  
17    ~~vacated or whether a new order for the involuntary administration~~  
18    ~~of antipsychotic medication shall be issued. The hearing shall~~  
19    ~~proceed as set forth in subparagraph (B) of paragraph (2) of~~  
20    ~~subdivision (a):~~

21    ~~(4) Any defendant who has been committed or has been on~~  
22    ~~outpatient status for 18 months and is still hospitalized or on~~  
23    ~~outpatient status shall be returned to the committing court where~~  
24    ~~a hearing shall be held pursuant to the procedures set forth in~~  
25    ~~Section 1369. The court shall transmit a copy of its order to the~~  
26    ~~community program director or a designee.~~

27    ~~(5) If it is determined by the court that no treatment for the~~  
28    ~~defendant's mental impairment is being conducted, the defendant~~  
29    ~~shall be returned to the committing court. The court shall transmit~~  
30    ~~a copy of its order to the community program director or a~~  
31    ~~designee.~~

32    ~~(6) At each review by the court specified in this subdivision,~~  
33    ~~the court shall determine if the security level of housing and~~  
34    ~~treatment is appropriate and may make an order in accordance~~  
35    ~~with its determination. If the court determines that the defendant~~  
36    ~~shall continue to be treated in the state hospital or on an outpatient~~  
37    ~~basis, the court shall determine issues concerning administration~~  
38    ~~of antipsychotic medication, as set forth in subparagraph (B) of~~  
39    ~~paragraph (2) of subdivision (a):~~



1     ~~(e) (1) At the end of three years from the date of commitment~~  
2     ~~or a period of commitment equal to the maximum term of~~  
3     ~~imprisonment provided by law for the most serious offense charged~~  
4     ~~in the information, indictment, or misdemeanor complaint,~~  
5     ~~whichever is shorter, but no later than 90 days prior to the~~  
6     ~~expiration of the defendant's term of commitment, a defendant~~  
7     ~~who has not recovered mental competence shall be returned to the~~  
8     ~~committing court. The court shall notify the community program~~  
9     ~~director or a designee of the return and of any resulting court~~  
10    ~~orders.~~

11    ~~(2) Whenever any defendant is returned to the court pursuant~~  
12    ~~to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this~~  
13    ~~subdivision and it appears to the court that the defendant is gravely~~  
14    ~~disabled, as defined in subparagraph (B) of paragraph (1) of~~  
15    ~~subdivision (h) of Section 5008 of the Welfare and Institutions~~  
16    ~~Code, the court shall order the conservatorship investigator of the~~  
17    ~~county of commitment of the defendant to initiate conservatorship~~  
18    ~~proceedings for the defendant pursuant to Chapter 3 (commencing~~  
19    ~~with Section 5350) of Part 1 of Division 5 of the Welfare and~~  
20    ~~Institutions Code. Any hearings required in the conservatorship~~  
21    ~~proceedings shall be held in the superior court in the county that~~  
22    ~~ordered the commitment. The court shall transmit a copy of the~~  
23    ~~order directing initiation of conservatorship proceedings to the~~  
24    ~~community program director or a designee, the sheriff and the~~  
25    ~~district attorney of the county in which criminal charges are~~  
26    ~~pending, and the defendant's counsel of record. The court shall~~  
27    ~~notify the community program director or a designee, the sheriff~~  
28    ~~and district attorney of the county in which criminal charges are~~  
29    ~~pending, and the defendant's counsel of record of the outcome of~~  
30    ~~the conservatorship proceedings.~~

31    ~~(3) If a change in placement is proposed for a defendant who~~  
32    ~~is committed pursuant to subparagraph (B) of paragraph (1) of~~  
33    ~~subdivision (h) of Section 5008 of the Welfare and Institutions~~  
34    ~~Code, the court shall provide notice and an opportunity to be heard~~  
35    ~~with respect to the proposed placement of the defendant to the~~  
36    ~~sheriff and the district attorney of the county in which criminal~~  
37    ~~charges are pending.~~

38    ~~(4) Where the defendant is confined in a treatment facility, a~~  
39    ~~copy of any report to the committing court regarding the~~  
40    ~~defendant's progress toward recovery of mental competence shall~~

1 be provided by the committing court to the prosecutor and to the  
2 defense counsel.

3 ~~(d) The criminal action remains subject to dismissal pursuant~~  
4 ~~to Section 1385. If the criminal action is dismissed, the court shall~~  
5 ~~transmit a copy of the order of dismissal to the community program~~  
6 ~~director or a designee.~~

7 ~~(e) If the criminal charge against the defendant is dismissed,~~  
8 ~~the defendant shall be released from any commitment ordered~~  
9 ~~under this section, but without prejudice to the initiation of any~~  
10 ~~proceedings that may be appropriate under the~~  
11 ~~Lanterman-Petris-Short Act, Part 1 (commencing with Section~~  
12 ~~5000) of Division 5 of the Welfare and Institutions Code.~~

13 ~~(f) As used in this chapter, “community program director” means~~  
14 ~~the person, agency, or entity designated by the State Department~~  
15 ~~of State Hospitals pursuant to Section 1605 of this code and Section~~  
16 ~~4360 of the Welfare and Institutions Code.~~

17 ~~(g) For the purpose of this section, “secure treatment facility”~~  
18 ~~shall not include, except for state mental hospitals, state~~  
19 ~~developmental centers, and correctional treatment facilities, any~~  
20 ~~facility licensed pursuant to Chapter 2 (commencing with Section~~  
21 ~~1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter~~  
22 ~~3.2 (commencing with Section 1569) of, Division 2 of the Health~~  
23 ~~and Safety Code, or any community board and care facility.~~

24 ~~(h) Nothing in this section shall preclude a defendant from filing~~  
25 ~~a petition for habeas corpus to challenge the continuing validity~~  
26 ~~of an order authorizing a treatment facility or outpatient program~~  
27 ~~to involuntarily administer antipsychotic medication to a person~~  
28 ~~being treated as incompetent to stand trial.~~

29 ~~SEC. 2.~~

30 *SEC. 3.* If the Commission on State Mandates determines that  
31 this act contains costs mandated by the state, reimbursement to  
32 local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code.